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RIGHT OF MINORITY STOCKHOLDERS TO INTERFERE WITH TRANSACTIONS OF THE CORPORATION PRIOR OR SUBSEQUENT TO THEIR BECOMING STOCKHOLDERS.

While courts are quick to protect minority stockholders whenever they have been injuriously affected by the fraudulent or *ultra vires* acts of the majority, they will not permit them to bring all their petty grievances into court merely to harass the majority, nor will they be permitted to attack any transaction of the corporation prior to the time where they became stockholders in it. Thus, in the recent case of Farwell v. Babcock, 65 S. W. Rep. 509, the Court of Civil Appeals of Texas held that where there is merely mismanagement, neglect, or abuse of discretion on the part of the officers of a corporation, courts will not interfere on behalf of minority stockholders to set aside contracts which are not *ultra vires*, but will only interfere where the course of conduct by the directors plainly shows an intention to sacrifice the interests of the corporation and the minority stockholders.

We cannot too strongly commend the decision of the court in this case. Any other rule than that announced would open the door to an avalanche of vexatious litigation which would demoralize business and affect seriously the stability of all investments in industrial stocks. Where there is neither fraud nor *ultra vires* the minority must submit to the action of the majority. Their only remedy is the corporate elections, and from the result of such elections there is no appeal. In this case the board of directors of a corporation leased the corporate rights and property to several of the directors who constituted a minority thereof. The court held the contract was voidable, but not void, though the directors used their position to advance their interests. Nor did the facts, according to the court's opinion, justify the appointment of a receiver nor the winding up of the corporation. This rule is supported by the weight of authority: Cates v. Sparkman, 73 Tex. 619, 11 S. W. Rep. 842, 15 Am. St. Rep. 806; Gamble v. Water Co., 123 N. Y. 91, 25 N. E. Rep. 291, 9 L. R. A. 527; Wheeler v. Steel Co., 143 Ill. 197, 32 N. E. Rep. 420, 17 L. R. A. 818.

In Cates v. Sparkman, the language of the court is adopted as the true rule in this question. The court said in part: "The breach of duty authorizing a suit by an individual stockholder for damage in the depreciation of his stock does not refer to mere mismanagement or neglect of the officers or directors in the control of the corporate affairs, or the abuse of discretion lodged in them in the conduct of the company's business. On this ground the courts do not interfere. The breach of duty or conduct of officers and directors which would authorize in a proper case the court's interference in suits of this character is that which is characterized by *ultra vires*, fraudulent, and injurious practices, abuse of power, and oppression on the part of the company or its controlling agencies, clearly subversive of the rights of the minority or of a shareholder, and which, without such interference, would leave the latter remediless. Thomp. Liab. 391; Pom. Ex. Jur. § 1096. But if the acts or things are or may be that which the majority have a right to do, or if they have been done irregularly, negligently, or imprudently, or are within the exercise of their discretion and judgment in the development or prosecution of the enterprise in which their interests are involved, these would not constitute such breach of duty, however unwise or inexpedient such acts might be, as would authorize the interference by the courts at the suit of a stockholder."

As to transactions happening before the dissenting stockholder enters the corporation the latter has absolutely no right to interfere on any ground. To this rule the court, in this case, gives emphatic assent. Too often cases arise in which stock is purchased in a company, having a past history which is a little cloudy, for the mere purpose of vexation and extortion. Litigation is commenced in order to force the purchase of their shares at exorbitant figures. The courts sternly discountenance all such unworthy endeavors, and the weight of authority is in favor of the rule that a person who did not own stock at the time of the transactions

complained of cannot complain or bring suit to have them declared illegal. Alexander v. Searcy, 31 Ga. 536, 8 S. E. Rep. 630, 12 Am. St. Rep. 337; Clark v. Coal Co., 86 Iowa, 436, 53 N. W. Rep. 291, 17 L. R. A. 557; Dimpfel v. Railway Co., 110 U. S. 209, 3 Sup. Ct. Rep. 573, 28 L. Ed. 121; United Electric Securities Co. v. Electric Light Co., 68 Fed. Rep. 673. In the latter case Judge Pardee states the reason of the rule as follows: "As a general proposition the purchaser of stock in a corporation is not allowed to attack the acts and management of the corporation prior to the acquisition of his stock; otherwise we might have a case where stock duly represented in a corporation consented to and participated in bad management and waste, and, after reaping the benefit of such transactions, could be easily passed into the hands of a subsequent purchaser, who could make his harvest by appearing and contesting the very acts and conduct which his vendor had consented to."

NOTES OF IMPORTANT DECISIONS.

WATERS AND WATER COURSES— LIABILITY FOR DRAINING SURFACE WATER ONTO ANOTHER'S LAND.—The drainage of surface water has always been a matter of great legal difficulty. In the recent case of Brandenburg v. Leigler, 39 S. E. Rep. 790, the Supreme Court of South Carolina, reversing the lower court, held that where surface water collects in a pond during rainy weather, it is actionable injury for the owner of the land to drain by a ditch such surface water onto lower proprietor to his injury. It appeared that the lower court in granting a nonsuit held that the water in question was mere surface water; that defendants could deal with it as a common enemy, and drain it by ditch onto the plaintiffs' land; that any injury resulting therefrom was *damnum absque injuria*, citing Baltzeger v. Railway Co., 54 S. Car. 242, 32 S. E. Rep. 358, 71 Am. St. Rep. 789. The trial court made the mistake of confusing the owner's right to embank against surface water coming from another's land and the right to drain surface water onto the land of another. The language of the court is clear on this point:

"Under the common-law rule surface water is regarded as a common enemy, and every landed proprietor has the right to take any measures necessary to the protection of his own property from its ravages, even if in doing so he throws it back upon a coterminous proprietor to his damage which the law regards as a case of *damnum absque injuria*, and affords no cause of action. We deal now with a different question. When one having the right to cut off surface water from his land nevertheless permits such water to collect in a natural basin on his land, he has an absolute right of property in such water, and may use it exclusively as his own. His dominion over such water is as great as his dominion over the realty upon which it rests, and of which it is a part. He can no more cast such water, by artificial means, injuriously upon his neighbor, than he could cast the mud or soil upon his neighbor's premises. In either case he would violate the neighbor's right of dominion over his own property. The absolute right of the lower proprietor to embank against the flow of surface water, and thereby cause it to rest upon the upper proprietor's land is wholly irreconcilable with the claimed right of the upper proprietor by artificial means to collect and cast such water upon the lower proprietor. It is a maxim of the common law ("*sic utere*," etc.) that every one must so exercise his legal right as not necessarily to injure another in the exercise of his legal right. If, therefore, the upper proprietor has no easement to drain surface water upon the lower proprietor either by natural or artificial means, and the lower proprietor has the legal right to cast it back upon the upper proprietor, it would seem unreasonable to hold that the upper proprietor may, nevertheless, lawfully collect such water in artificial channels, and throw it upon the lower proprietor. The upper proprietor may acquire the right to drain surface water onto his neighbor's land through artificial channels by prescription. This, of course, involves a right of action to prevent such prescriptive right." See also the following authorities to same effect: Gray v. McWilliams (Cal.), 32 Pac. Rep. 976, 35 Am. St. Rep. 163, 21 L. R. A. 593; Barkley v. Wilcox, 86 N. Y. 140, 40 Am. Rep. 519; Schuster v. Albrecht (Wis.), 73 N. W. Rep. 990, 67 Am. St. Rep. 804; Adams v. Walker, 34 Conn. 466, 91 Am. Dec. 742; Pye v. City of Mankato, 36 Minn. 373, 31 N. W. Rep. 863, 1 Am. St. Rep. 671; Davis v. City of Crawfordsville, 119 Ind. 1, 21 N. E. Rep. 449, 12 Am. St. Rep. 361; Rychlicki v. City of St. Louis, 98 Mo. 497, 11 S. W. Rep. 1001, 4 L. R. A. 594, 14 Am. St. Rep. 651; Pettigrew v. Village of Evansville, 25 Wis. 223, 3 Am. Rep. 50.

SPENDTHRIFT TRUSTS.

Introduction.—The subject of spendthrift trusts commands the attention of every possessor of property. To the man of wealth it provides a way by which he may make suitable provision for the maintenance and support of another, and yet secure the fruits of his toil from the improvident acts of the object of his bounty. To the reckless and extravagant beneficiary, it offers a means of being saved from himself. This doctrine is the latest development of the courts of chancery. It has been born within the memory of men yet living, and has attained its full stature during the last quarter of a century. So rapid has been its growth, so universally is its validity

being recognized by the courts of this country, that a knowledge of the law which unfolds its possibilities and defines its boundaries is of vast importance to every lawyer and conveyancer. To briefly trace the historical development of this doctrine, to find in its history the reasons for its origin and growth, and, finally, to state the law relating to these modern trusts, is the purpose of this paper.

Definition.—A spendthrift trust may be defined as a settlement of property in trust for a beneficiary, other than the donor, and so limited that it cannot be alienated by way of anticipation, or be subject to seizure by the creditors of the beneficiary, in advance of its payment to him. The doctrine set forth in this definition is a radical innovation upon the long established rules of both law and equity. The idea that one may enjoy the fruits of property, and yet hold it beyond the reach of creditors, shocked alike the conscience of the chancellor and the exponent of the common law.

Old Rules of Law and Equity.—In order to properly understand this modern doctrine, which is a creature of our courts, it will be necessary to briefly examine some of the hard and fast rules of the common law:—for in the harshness and inflexibility of those rules do we find the reasons for the origin and growth of equity. It will also be necessary to examine the old rules of equity, to find, if we can, the restrictions and limitations imposed upon the settlor of a trust fund respecting his power to protect the fund by inhibitions upon the power of the *cestui que trust*.

Struggle for the Right of Alienation.—The history of the law of property is, in a great measure, a history of the struggle for the right and power of alienation. On one side are arrayed the landed barons and parliament, on the other, the courts and the people. The great freedom of alienation enjoyed by the ancient Saxons was substantially taken away on the introduction of the feudal system by William the Conqueror. Step by step, through successive changes, the restrictions were overcome until finally, with one exception, the free right of alienation was given by the statute of *Quia Emptores*,[1] as an inseparable incident to an estate in fee.[2] There still remained, however, the fetters attached to estates tail by their creator, the statute "*De Donis Conditionalibus.*" It took nearly two hundred years to free this estate from the restraints which inhered in its very nature; but this was finally accomplished by a striking process of judicial legislation which culminated in the establishment of the rule in Taltarum's case,[3] whereby the entails were barred, and the estate made alienable.

Restraints at Common Law.—On the final triumph of the courts and people in the establishment of the rule in Taltarum's case, new questions arose to perplex the minds of judges and lawyers. While the general right of alienation undoubtedly existed, the question arose as to whether this general right was subject to any special restrictions. In answer to this question, Sir George Jessel, M. R., has said: "You may restrict alienation by prohibiting a particular class of alienation, or you may restrict alienation by prohibiting to a particular class of individuals, or you may restrict alienation by restricting it to a particular time."[4]

Same, Continued.—This statement of the master of the rolls logically leads our inquiry into three channels: First, what restraints were valid as to kind? Second, how far could a conveyance be restricted as to persons? Third, is the restriction valid if restricted for *any* given time? We now proceed to an examination of these questions. It is beyond the purpose of this paper to enter into a minute discussion of these common-law questions; but the endeavor shall be to present the law in all the great essential principles which lead up to the subject under review. In doing so it will be necessary to consider these questions as affecting three estates, viz: estates in fee, estates for life, and for years.

Restraints Upon Estates In Fee.—In general, the power of alienation is necessarily and inseparably incidental to an estate in fee. Without such a right the estate granted would be neither a fee-simple, or any other estate known to the law. This principle is older than the common law; for Aristotle says, "It is the definition of property to have in one's self the power of alienation." Hence, if land be conveyed on condition that the grantee shall not alien,[5] or a provision that, upon alienation, the estate should be charged with a sum of money,[6] the condition is void. "For, if this condition be good, then the condition should oust him of all power which the law gives him, which should be against reason; and, therefore, the condition is void."[7]

Restraints as to Kind.—"You may restrict alienation by prohibiting a particular class of alienation."[8] If this statement be sound law it is evident that it can have but a very limited application. The master of the rolls says the only prohibition is against selling; and as there are various modes of alienation besides sale, a person may lease, or he may mortgage, or he may settle. But it is difficult to see any distinction between a sale and a mortgage, whereby the mortgagor can suffer the estate to be taken under foreclosure proceedings.[9] And while the above

[1] 18 Edw. I. (1290.) The statute *quia emptores* excepted the king's tenants *in capite*.

[2] 1 Spence Eq. 138; Williams' Real Prop. 61; Co. Litt. 43b.

[3] Year Book 12, Edw. IV. 19; 2 Black. Com. 116.

[4] *Re* Macleay, 20 L. R. Eq. 186.

[5] 4 Kent's Com. 131; Williams' Real Prop. 88; Patter v. Couch, 141 U. S. 296; Mandelbaum v. McDonell, 29 Mich. 78; Nagel's Appeal, 33 Pa. St. 80; *Re* Machee, 21 Ch. Div. 838.

[6] De Peyster v. Michael, 6 N. Y. 467.

[7] Co. Litt. sec. 360.

[8] *Re* Macleay, 20 L. R. Eq. 186.

[9] Pearsons, J., in *Re* Rosher, 26 Ch. Div. 801.

doctrine has had a limited following,[10] it is submitted that the great weight of the well reasoned authority is against it.[11] In *Re* Rosher[12] the doctrine was carefully reviewed, and Pearsons, J., pronounced it unsound.

Restraints as to Kind, Continued.—By the weight of authority, if in a devise or bequest of property, sufficient words are used, or if the intention can be gathered from the entire instrument to give to the devisee or legatee a fee-simple estate in lands, or an absolute interest in personalty, followed by a limitation over, unless the devisee or legatee disposes of it in his lifetime, the limitation over is void.[13] Likewise, a provision in a will that land devised should in no wise ever be subject to the debts of the devisee, is invalid.[14] The difficulty encountered in these cases is to determine whether it was the intention of the testator to convey an absolute interest or to give merely a life estate to the devisee or legatee. If it was the intention to pass merely a life interest, then the limitation over is valid.[15]

Restraints as to Persons.—Here we meet with great conflict in the authorities. Littleton says: "But if the condition be such that the feoffee shall not alien to such a one, naming his name, or to any of his heirs, or the issue of such a one, etc., which conditions do not take away all power of alienation from the feoffee, then such condition is good."[16] In commenting upon this section Chancellor Kent says: "But this case falls within the general principle, and it may be very questionable whether such a condition would be valid to-day."[17] In Doe v. Pearsons[18] a devise on condition that the devisee should not dispose of her interest except to her sister or sisters or their children, was held good. In *Re* Macleay[19] a devise to J on the condition that he never sells out of the family was held valid; the test being, it was said, whether the condition took away the whole power of alienation substantially.[20]

Contra View.—In *Re* Rosher[21] it was held that the condition which sought to bind the son not to sell or mortgage the estate without first offering to the widow the option to purchase the premises was void. So also the injunction that the devisee should never sell out of the family; but if sold, it must be to one of his brothers hereafter named, was held invalid.[22] And a covenant by the grantee that he would not alien to anyone except his, or their child or children, without the license of the grantor, was held repugnant to the estate granted.[23] It is evident that the cases cited in the previous section exceed the limits of the law as stated by Littleton. In those cases the restraint was against all the world except the indicated few, while Littleton's statement would indicate that the freedom must extend to the many and the restraints to the few. The weight of modern authority is undoubtedly against the doctrine of *Re* Macleay.[24]

Restraints as to Time.—It is within the power of a testator or settlor to declare that an estate shall be forfeited upon the happening of a particular event within the life or lives in being, and 21 years thereafter. Such a condition cannot be had for remoteness, since every estate must vest within the period required by the rule against perpetueties. Therefore, a condition or conditional limitation upon alienation of a contingent interest before it vests, is good.[25] If, however, the interest be vested, a condition or a conditional limitation upon alienation is generally held to be void.[26] In Mandelbaum v. McDonnell,[27] Christiancy, J., in the most learned review of this subject to be found in the books, says: "The only safe rule of decision is to hold, as I understand the law, for ages to have been, that a condition or restriction which would suspend all power of alienation for a single day, is inconsistent with the estate granted, unreasonable and void."

Estates for Life.—The statute *quia emptores* applied only to the usufructuary interest then known as a fee.[28] Therefore, a gift of an estate for a life subject to a provision that the estate shall cease, or go over to a third person upon

[10] Smith v. Faught, 45 U. C. Q. B. 484; Meyers v. Hamilton Provident & Loan Co., 19 Ont. 358; *In re* Winstanley, 6 Ont. 315.

[11] Ware v. Cann, 10 B. & C. 433; Hood v. Olander, 34 Beav. 513; De Peyster v. Michael, 6 N. Y. 467.

[12] 26 Ch. Div. 801.

[13] Kelley v. Mains, 135 Mass. 231; McKenzie's Appeal, 41 Conn. 607; Outland v. Bowen, 115 Ind. 150; Bills v. Bills, 80 Iowa, 269; Van Horn v. Campbell, 100 N. Y. 287; Wead v. Gray, 78 Mo. 59; Patter v. Couch, 141 U. S. 296; Henderson v. Cross, 29 Beav. 216; Perry v. Merritt, 18 L. R. Eq. 152; Holmes v. Godson, 8 DeG. M. & G. 152. *Contra*, Doe v. Glouer, 1 C. B. 448.

[14] Van Osdell v. Champion (Wis.), 62 N. W. Rep. 539.

[15] See Estates for Life, *post*.

[16] Sec. 361, 2 Jarman on Wills, 532.

[17] 4 Kent's Com. 131.

[18] 6 East, 173, 27 Conn. 628.

[19] 20 L. R. Eq. 186.

[20] Cowell v. Springs Co., 100 U. S. 55; Winsor v. Mills, 157 Mass. 362; Jackson v. Schutz, 18 Johns. 174.

[21] 26 Ch. Div. 801.

[22] Attwater v. Attwater, 18 Beav. 330.

[23] Billing v. Welch, L. R 6 C. L. 88.

[24] Schermerhorn v. Negus, 1 Denio, 448; Oxley v. Lane, 35 N. Y. 340; Anderson v. Carey, 36 Ohio St. 506; McCullough v. Gilmore, 11 Pa. St. 370; Barnard v. Bailey, 2 Harrington (Del.), 56; Fisher v. Wister, 154 Pa. St. 65; Murray v. Green, 64 Cal. 363; Marse v. Blood (Minn.), 71 N. W. Rep. 682; Thornton v. Stanley (Ohio), 45 N. E. Rep. 318; Cushing v. Spaulding (Mass.), 41 N. E. Rep. 297; Van Osdell v. Champion (Wis.), 62 N. W. Rep. 539.

[25] Large's Case, 2 Leon. 82, 3 Leon. 182; Samuel v. Samuel, 12 Ch. Div. 152; Powell v. Boggis, 35 Beav. 535.

[26] Patter v. Couch, 141 U. S. 296; Mandelbaum v. McDonell, 29 Mich. 78; Bennett v. Chapin, 77 Mich. 526; De Peyster v. Michael, 6 N. Y. 497; *In re* Rosher, 26 Ch. Div. 801. *Contra:* Camp v. Cleary, 76 Va. 140; Gray v. Blanchard, 8 Pick. 284.

[27] 29 Mich. 78.

[28] De Peyster v. Michael, 6 N. Y. 497; 1 Wash. on Real Prop. 78; Tiedman on Real Prop. 31.

alienation, voluntary or involuntary, is valid.[29] But a provision that the life tenant shall hold the land "as long as he should live," and providing further, that no incumbrance or lien was to be placed thereon during the lifetime of the tenant, nor was it to be liable for his debts, is void.[30] And, so far as legal estates are concerned, this rule is true even in those states allowing spendthrift trusts. In England it is true of equitable, as well as legal interests; but in this country, while some of the states have followed the rule of the English courts, others have departed therefrom, and have allowed the creation of what we now call spendthrift trusts.

Estates for Years.—The rule is well settled that a lease of an estate for years subject to a forfeiture on alienation is valid.[31] If, however, there is a lease for a term of years containing a provision that the interest of the lessee shall not be liable for his debts, or that he shall not incumber the same, such provision is void.[32] Should such an interest be created by way of a trust some very perplexing questions would be presented for judicial interpretation. We have now examined and determined, to some extent, what restrictions the donor of a legal interest could, at common law, impose upon the property in the hands of the donee. It now remains for us to determine the rules of equity in regard to equitable interests.

"*Equity Follows the Law.*"—It has always been the policy of the courts of equity to give to executed trust estates the same construction and effect as are given by the courts of law to legal estates. The incidents of the estates are, in general, the same. The same restrictions are applied as to creating estates and giving absolute dominion over property. In the preceding pages we have found that any restriction upon a fee-simple estate, which took away the incident of alienation or withdrew the estate from the reach of creditors, was repugnant to the estate granted and void. What were the rules of equity in regard to like restrictions upon equitable fees?

Restraints on Equitable Fees.—Following the familiar maxim quoted above, courts of equity have steadfastly adhered to the doctrine that a restraint upon the alienation of an equitable fee is void; and can, by proper proceedings, be taken in satisfaction of debts like legal estates.[33] Thus, a promise attached to an equitable fee that it shall not be alienated as long as A and his heirs owned certain other land,[34] or property given to trustees until A reaches the age of twenty-six,[35] is invalid; and in the latter case, upon the bankruptcy of A before arriving at the age of twenty-six, his assignee in bankruptcy was entitled to the property.

Conflicting Opinions in America.—The doctrine set forth in the above section is supported by an unbroken line of decisions, both English and American, down to within very recent years. But some of the later decisions in the jurisdictions allowing spendthrift trusts seem to have applied the doctrine of these trusts to equitable fees; and have gone so far as to uphold a devise to a trustee to sell the property and pay over to the son of the testator, $10,000 when he was twenty-one years of age, $10,000 when he was twenty-five, and the balance when he was thirty years of age.[36] This is a striking innovation upon the old established rules of chancery; but it shows the evolution in the law of spendthrift trusts, and is no more remarkable than the enunciation of this doctrine as applied to equitable life estates, which we now proceed to examine.

The New Doctrine.—Thus far in our progress we have been examining the doctrines of the centuries. We now come to what may fittingly be called the line of demarkation. In England, and in some of the states of this country, the old doctrine goes on as it has gone for hundreds of years; while in other jurisdictions a new theory has been evolved, and so rapid has been its growth in our courts during recent years that it bids fair to soon become well nigh universal. To set forth the doctrine of the English courts of chancery relating to restraints upon equitable life estates, and to give some of the reasons which led to the change in some of our own courts in recognizing what are now known as spendthrift trusts, and lastly to set forth the present law of each state, is the purpose of the second part of this paper.

English Doctrine.—From a statement of three leading cases, the present law of England may be deduced. It rests largely upon the celebrated decision of Lord Eldon in Brandon v. Robin-

[29] Conger v. Lowe, 124 Ind. 368; Bull v. Kentucky Bank (Ky.), 14 S. W. Rep. 425; Waldo v. Cummings, 45 Ill. 421; Oldman v. Oldman, L. R. 3 Eq. 404; Shee v. Hale, 13 Ves. 404.

[30] Ehrisman v. Sener, 162 Pa. St. 133; Thompson v. Murphy (Ind.), 37 N. E. Rep 1094; Butterfield v. Reed, 160 Mass. 361; Maynard v. Cleaves, 149 Mass. 570; McCormick Harvesting Machine Co. v. Gates, 75 Iowa, 343.

[31] Rae v. Galliers, 2 T. R. 133; Rae v. Harrison, 2 T. R. 425; Doe v. Clark, 8 East, 185.

[32] Hobbs v. Smith, 15 Ohio St. 419.

[33] Turley v. Massengill, 7 Lea, 353; Taylor v. Harwell, 65 Ala. 1; Sears v. Choate, 146 Mass. 395; Keyser's Appeal, 57 Pa. St. 236; Piercy v. Roberts, 1 Myl. & K. 4; Josselyn v. Josselyn, 9 Sim. 63.

[34] Winsor v. Mills, 157 Mass. 362.

[35] Sanford v. Lackland, 2 Dill. 6. The case of Dougal v. Fry, 3 Mo. 40, is often erroneously cited as sustaining this proposition. While in this case it was held that a restraint on alienation until the son should reach the age of 25 years was good, the ground of the decision was that the deed was made under the old Spanish law, and by that law the son would not attain his majority until he reached the age of 25 years. See Collins v. Clamorgan, 5 Mo. 272, 6 Mo. 169; Clamorgan v. Lane, 9 Mo. 442.

[36] Claflin v. Claflin, 149 Mass. 19; Barker's Estate, 159 Pa. St. 518; Gae's Estate, 146 Pa. St. 431; Beak's Estate, 33 Pa. St. 51; Rhoads v. Rhoads, 43 Ill. 239; Weller v. Noffsinger (Neb.), 77 N. W. Rep. 682.

son.[37] In this case there was a devise of money in trust to be invested by the trustees, and the dividends, interests, and produce thereof, as the same became due and payable, should be paid to A on his own proper order and receipt, to the intent that the same should not be grantable, transferable, or otherwise assignable, by way of anticipation of any unreceived payment or payments thereof, with a gift over on A's death. A became a bankrupt, and it was held that his assignees in bankruptcy were entitled to his life interest. In his decision, Lord Eldon lays down two fundamental propositions: First, "There is no doubt that the property may be given to a man until he becomes a bankrupt." Second, "To prevent his assignees from taking his interest it must be given to someone else upon his bankruptcy." In Twopeny v. Peyton,[38] a devise to trustees in trust during the life of A, to apply the income in such amounts and at such times, and in such manner, as the trustees, in their discretion, should deem most expedient, for the sole purpose of the support and maintenance of A's children. Subject to this trust, the property was given to A's children. Held, that A's assignee in bankruptcy was not entitled to the income. Here we have an example of the full descretionary power of the trustee; and chancery merely refused to interfere in the exercise of that discretion. In Lord v. Bunn, 2 Young & C. Ch. 98, property was given in trust, and the trustees were to expend the income of same towards the maintenance and support of A, and his wife and his children, or any of them, or otherwise for his, her, their, or any of their use and benefit, in manner as the trustees should think proper, with a gift over on A's death. A had wife and children living at the time of taking the benefit of the insolvent act. Held, that the trustee had a right to apply the income among A, his wife and children, and that only A's portion passed to his assignees. If, however, A's portion could not be separated without defeating the purpose of the trust, his interest could not be reached by his assignees or creditors.[39]

English Doctrine Stated—These cases mark the limits to which the English courts of chancery have gone. And it will be seen from the above cases that a person cannot put a restraint upon the alienation of an equitable life estate, or exclude the rights of creditors. Yet he may settle property upon another *until* alienation, bankruptcy, or insolvency, or he may provide for a limitation over upon the happening of either of these events.[40] So also, where the trustee has full discretionary power of applying or not applying the fund for the benefit of the *cestui que trust*, the bankruptcy of the *cestui que trust* will have no effect upon the power.[41] And where the trust is not exclusively for the benefit of the bankrupt, but of the bankrupt and another person, the creditor will take only so much as was intended for the bankrupt, provided his interest can be separated from the others.[42]

Reasons for the Doctrine.—The reason of the principle against restraint on alienation and liability for debts, as applied to equitable life interests, is the repugnancy of such restraints to the ordinary rights of property; and that such property would thereby be withdrawn from the ordinary rules and channels of commerce. The English courts have unswervingly maintained the theory that the right of alienation and liability for debts are inseparable incidents of life estates, whether limited by way of trust or otherwise, except where there is a reverter or a cesser of the estate, dependent upon an attempted alienation or seizure by creditors. They maintain that it is against the public policy,—for "certainly no man should have an estate to live on, but not an estate to pay his debts with."

Same, Continued.—Many cases are to be found in the English reports in which these principles have been applied. In Rochford v. Hackman [43] Sir George Turner, V. C., says: First, property cannot be given for life any more than absolutely, without the power of alienation being incident to the gift; and that any attempt to restrict the power of alienation, whether applied to an absolute interest or to a life estate, is void, as being inconsistent with the interest given, and, secondly, that although a life interest may be expressed to be given, it may well be determined by an apt limitation over. A man cannot create an estate and clog the power of alienation or relieve it from liability for debts, any more than he can create a perpetuity by an executory devise after an indefinite failure of issue."

Exceptions to the English Doctrine.—In equity jurisprudence there has long existed a well recognized exception to the above doctrine. Equity soon observed the harshness of the common-law rule respecting the property rights of a married woman, and set itself about to remedy the injustice, which was finally accomplished by allowing the creation of separate estates for married women. And it is to be observed that in doing this equity violated one of the fundamental and inflexible rules of property. "That was purely an equitable doctrine, the invention of the chancellor's, and is, as I have said, an exception to the general law, which says that property shall not be inalienable. The exception was justified on the ground that it was the only way, at least the best way, of giving property to a

[37] 18 Ves. 429. See also Graves v. Dalphin, 1 Sim. 66; Snowden v. Dales, 6 Sim. 524.

[38] 10 Sim. 487; Brandon v. Robinson, 18 Ves. 429.

[39] Godden v. Crowhurst, 10 Sim. 642; Tolland Co. Mut. Life Ins. Co. v. Underwood, 50 Conn. 493.

[40] Shee v. Hale, 13 Ves. 404; Lewis v. Lewis, 6 Sim. 499.

[41] Twopeny v. Peyton, 10 Sim. 487; Godden v. Crowhurst, 10 Sim. 642; Wallace v. Anderson, 16 Beav. 533.

[42] Lord v. Bunn, 2 Y. & C. C. C. 98; Page v. Way, 3 Beav. 20; 2 Perry on Trusts, sec. 386.

[43] 9 Hare, 475 480.

married woman. It was considered that to give it to her without such a restraint would be, practically, to give it to her husband, and, therefore, to prevent this, a condition was allowed to be imposed restraining her from anticipating her income, and thus fettering her free right of property."[44] The validity of Lord Thurlow's clause of anticipation is a well settled principle in equity jurisprudence.

American States Adhering to the English Doctrine.—I have given rather a full statement of the English law upon this subject, for only by a knowledge of these general rules of law and equity, together with the exception mentioned, are we able to understand the causes which led to the comparatively recent change in a majority of the states in this country in which the question has arisen. While it is true that a number of the states have, in their decisions, adhered to the English doctrine, it will be noticed that most of the cases were decided at an early period in our history when American equity jurisprudence was in its infancy and the English decisions were universally relied upon as an unerring guide. The states adhering to the English doctrine are, Rhode Island,[45] North Carolina,[46] South Carolina,[47] Georgia,[48] Alabama,[49] and Ohio.[50]. But the previous decisions in North Carolina are greatly weakened if not entirely overthrown by the recent case of Monroe v. Trenholm.[51]

The Departure From English Doctrine. — The causes leading to the departure from the long established rules of equity are in a measure sociological. During the last half of the nineteenth century there was a noticable tendency in the legislation to ameliorate the condition of the unfortunate, to provide protection for the improvident and lessen the burden of the debtor class. This is illustrated by the eight-hour labor laws, the laws regulating the payment of wages, and especially by the liberality and universality of the exemption laws, whereby property ranging in value from a few hundred dollars in some of the states, to five thousand dollars in Nevada, is without the reach of creditors.

Assistance of the Courts.—The courts, as they must always finally do in a government like ours, gave recognition and aid to this feeling among men. In rendering this assistance to the weak and improvident they have enunciated no new principles, but have merely made a new application of principles recognized and enforced by the courts for nearly two centuries. When Lord Thurlow invented, and the courts sustained, that clause, "and not by way of anticipation," ina settlement of a married woman's estate, the foundation of spendthrift trusts was laid. If the courts of chancery should guard and protect with jealous solicitude the property of a *feme covert* from the superior legal rights of her husband, why should it not apply the same principles to a person *sui juris*, when the object to be obtained and the intention to be effectuated are the same in either case? It is difficult to perceive any good reason why a testator who has the entire *jus disponendi* in disposing of his own property, and who gives without pecuniary consideration, may not give to his beneficiary a qualified and limited, instead of an absolute, interest in the income. If a person,out of gratitude or love for another, wishes t use his property to protect that other from the accidents of fortnne or his own improvidence there is no reason in our law or public policy why he should not be permitted to do so.

English Doctrine Inconsistent.— But it is said that this doctrine is a fraud upon the creditors, as it withdraws from their reach the property upon the faith of which they were induced to extend the credit. The answer is, that the same is true of the English doctrine. For the settlor has only to provide for a cesser of the estate, or a limitation over upon an attempted alienation or bankruptcy, and the property is just as effectually withdrawn from the reach of the creditor. Our registration laws require that all wills and other instruments creating trusts must be placed upon the public records; and the same law which gives the creditors notice of the cesser or the limitation over, conveys to him the notice of the exemption of the property from liability for debts. There is no fraud upon him, for by the exercise of reasonable diligence he acquires a knowledge of the inhibitions to which the property is subject, and our laws charge him with constructive notice of these facts of record.

Same, Continued.— Again, the English courts strenuously maintain that the right of alienation is an inseparable incident of an equitable, as well as the legal life estate. Yet they were forced to admit the exception in the married woman's estate. That is to say, if the *cestui que trust* is in a certain condition of dependence, equity will protect her interest, otherwise the express intention of the settlor would be defeated. It is apparent that the English rule, considered as one in the interest of the creditors of the donee, is inconsistent, and affords them no protection; for this rule, like the famous statute of uses, would simply add a few words to the trust instrument, and the effect of the rule is defeated. In our courts the whole tendency of the modern decisions is that the right of alienation is not a necessary incident to an equitable life interest.

[44] Sir Geo. Jessel in Buckton v. Hay, 11 Ch. Div. 645.

[45] Tillinghast v. Bradford, 5 R. I. 205; *Re* Washburn (R. I.), 41 Atl. Rep. 658.

[46] Pace v. Pace, 73 N. Car. 119; Dick v. Pitchford, 1 Dev. & Bat. Eq. 480.

[47] Heath v. Bishop, 4 Rich. Eq. 46.

[48] Bailie v. McWharte, 56 Ga. 183; Kempton v. Halowell, 24 Ga. 52; New England Mortgage Security Co. v. Gordon (Ga.), 22 S. E. Rep. 706.

[49] Robertsen v. Johnson, 38 Ala. 197; Rugely v. Robinson, 10 Ala. 702.

[50] Wallace v. Smith, 2 Handy, 79; Stanley v. Thornton, 7 Ohio C. C. 455.

[51] 112 N. Car. 684.

Equity can modify the incidents of an estate which is the creation of equity.[52]

American States Classified. — The decisions in our state courts naturally arrange themselves into four groups: First, those states adhering to the English rule; second, those states where only *dicta* are to be found; third, those states where the question is regulated by statute; and fourth, those states where the doctrine of spendthrift trusts is upheld. The states falling in the first group have already been enumerated in "American States adhering to the English doctrine, *supra*." In the second group are Wisconsin Indiana, Delaware and Conneticut. In the third group are to be found the states of New York, New Jersey, Tennessee and Kentucky. In group four, Pennsylvania, Massachusetts, Illinois, Maine, Mississippi, Maryland, Texas, Nebraska, Vermont, Virginia and Missouri. I shall discuss them in the order indicated.

Group I—Of the first group of states nothing further need be said, since any discussion of their decisions would be merely a repetition of the English law, already discussed, and I proceed directly to the second group.

Group II—Dicta.— In Wisconsin the *dicta* are strongly in favor of spendthrift trusts. In Summer v. Newton,[53] property was given in trust for the support and maintenance of C and M for life, with a limitation over to S and H. M released her interest in the property to the remainder-men, who petitioned the court that the trust property be transferred to them. The court refused to grant the petition, for the reason that it would be against the manifest intention of the testatrix. In Lamberton v. Pereles,[54] there was no clause against anticipation, and the court held that the interest of the *cestui que trust* was assignable, but say: "It would seem that the founder of a trust fund may secure the benefits of the same to the objects of his bounty by providing that the income thereof shall not be alienable by anticipation nor subject to be taken for his debts.[55]

Dicta Continued.—The question has never been squarely presented before the courts of Indiana, but the *dicta* are such as to leave little doubt but that a spendthrift trust would be upheld in that state. In Martin v. Davis,[56] there was a devise in trust for the use and benefit of A and B during their lives, the interest to be paid to them semi-annually by the trustee. It was held that, as no condition was enjoined to the gift and there being no prohibition against alienation, the beneficiary could make a valid assignment of his portion. In Thompson v. Murphy[57] there was an attempt to restrain the alienation of a legal life estate, and while it was held that this could not be done, the court said that the validity of such a restraint, when created by a trust, was settled by many well considered cases. In the case of Gray v. Corbit[58] the Supreme Court of Delaware has declared that a trust for support and maintenance would be protected from the claims of creditors.

Dicta Continued.—The *dicta* in Connecticut are conflicting. In Easterly v. Keney[59] there is a strong *dictum* in favor of the English doctrine, and opposed to the *dictum* of an earlier case.[60] This was followed by a strong *dictum* favoring the validity of the restraint.[61] The following year the question was again before the court in Tolland Co. Mutual Life Ins. Co. v. Underwood.[62] The trust was for the support of the wife and three daughters. Plaintiff recovered a judgment against the wife, and in a suit to enforce the judgment lien the court held that the wife's interest in the land devised was inseparable from the other interests; and says: "The interest of the mother, even though it was capable of separation, could not be separated from the interests of the daughters and transferred to creditors without seriously interfering with, or entirely defeating the purposes of the trust."[63]

Group III—Statutory Regulations.—Next in the order of examination come those states where the question of spendthrift trusts is controlled by statute. All of the states having such regulations have practically re-enacted the provisions of the New York Civil Code. Section 57 of the Code provides that, "Where a trust is created to receive the rents and profits of land, and no valid direction for accumulation is given, the surplus of such rents and profits, beyond the sum that may be necessary for the education and support of the person for whose benefit the trust is created, shall be liable in equity to the claims of creditors of such persons in the same manner as other property which cannot be reached by an execution at law." In section 1879 it is further provided that a bill of discovery cannot reach "any money, thing in action, or other property, held in trust for a judgment debtor, where the trust has been created by, or the land so held in trust has proceeded from, a person other than the judgment debtor.

Statutory Regulations Continued.—Prior to the enactment of this statute in 1828, the decisions of the New York courts favored the English doctrine.[64] There have been many decisions involv-

[52] Stambaugh's Appeal, 135 Pa. St. 585; Nichols v. Eaton, 91 U. S. 716; Lampert v. Haydel, 96 Mo. 439.

[53] 64 Wis. 210, 25 N. W. Rep. 30.

[54] 87 Wis. 449, 58 N. W. Rep. 776. See Osdell v. Champion (Wis.), 62 N. W. Rep. 539.

[55] As to trusts in realty, see Wis. Rev. Sts. secs. 2681, 2083, 2089, 3029.

[56] 82 Ind. 38. See also Canwell v. Boyd, 109 Ind. 447.

[57] 4 Del. Ch. 135.

[58] 37 N. E. Rep. 1094.

[59] 36 Conn. 18 (1869).

[60] Leavitts v. Burne, 21 Conn. 1.

[61] Clements' Appeal, 49 Conn. 519 (1882).

[62] 50 Conn. 493.

[63] See also Tarrant v. Backus, 67 Conn. 277; Farmers' Savings Bank v. Brewer, 27 Conn. 600; Williams v. Robinson, 16 Conn. 517; Donalds v. Plumb, 8 Conn. 447; Huntington v. Jones (Conn.), 43 Atl Rep. 564.

[64] Havens v. Healy, 15 Barb. 296; Bramhall v. Farris, 14 N. Y. 41.

ing the application of the statutes,[65] and the tendency of the decisions is to show great indulgence to the beneficiary in upholding very liberal allowances for his support and education. It is well settled, however, that the surplus, if any there be, can be reached by a proceeding in the nature of a creditor's bill;[66] but the beneficiary himself cannot alienate either the principle fund or the income.[67] In New Jersey it is provided by Acts of 1880, p. 274, that such trust property cannot be reached to be applied to the satisfaction of the judgment unless the income exceeds $4,000; thus, amending the original acts of 1845 and 1864[68] which were copied from the New York Code. It would seem that the income in excess of $4,000 might be reached by creditors. This is the only state having a statutory provision limiting the amount to be exempt from the claims of creditors.

Statutory Regulations Continued.—The 57th section of the New York Code was adopted by Tennessee[69] in 1858. But there has been some conflict in the decisions involving the application of the statute. While some of the decisions seem to hold that the statute did not authorize the creation of spendthrift trusts,[70] these earlier decisions have been overruled by the decision in the case of Journolmon v. Massengill.[71] In this case Lurton, J., in an elaborate opinion expresses his approval of the doctrine of spendthrift trusts, and holds that they are authorized by the statute. But the Code does not authorize the creation of a spendthrift trust for the settlor's own benefit.[72] Kentucky, by statute, forbids the creation of spendthrift trusts.[73] The question has arisen in a number of cases, and there is an almost uniform line of decisions supporting the view that they are rendered invalid by the provisions of the statute.[74] See the language of the statute in note 7.

[65] Williams v. Thorn, 70 N. Y. 270; Tolles v. Wood, 99 N. Y. 616; Cruger v. Jones, 18 Barb. 467; Wetmore v. Witmore, 149 N. Y. ——.

[66] Campbell v. Foster, 35 N. Y. 361; McEwen v. Brewster, 17 Hun, 223, and cases cited in note 62.

[67] Talles v. Wood, *supra*.

[68] Hardenburg v. Blair, 30 N. J. Eq. 646; Halstead v. Westerfelt, 41 N. J. Eq. 100; Hunterdon Freeholders v. Henry, *Id.* 388.

[69] Sec. 5026; also sec. 5027, Mill and V. Code.

[70] Turley v. Massengill, 7 Lea, 353; Hooberry v. Harding, 10 Lea, 392.

[71] 86 Tenn. 81, 5 S. W. Rep. 719. See also Henson v. Wright, 88 Tenn. 507, 12 S. W. Rep. 1035.

[72] J. S. Menken Co. v. Brinkley, 31 S. W. Rep. 92.

[73] The Kentucky statutes provide that, "Estates of every kind, held or possessed in trust, shall be subject to the debts or charges of the person to whose use, or for whose benefit they shall be respectively held or possessed, as they would be subject if those persons owned the like interest in the property held or possessed as they own or shall own in the use or trust thereof." Jackson v. Jackson, 58 S. W. Rep. 423-597.

[74] Haycraft v. Bland, 90 Ky. 400; Bull v. Ky. Nat. Bank (Ky.), 12 L. R. A. 37; Ernst v. Schenkle, 95 Ky. 608; Davidson v. Kemper, 79 Ky. 5; Samuel v. Salter, 3 Met. 259. But see Pape v. Elliott, 8 B. Mon. 693; White v. Thomas, 8 Bush, 661.

Group IV—Spendthrift Trusts Upheld.—I shall now endeavor to present the law of those states upholding the doctrine of spendthrift trusts. In determining what the law is, and the extent to which the doctrine has been carried, it will be helpful to examine a leading case in each of these states, for nothing so well discloses the law as the decisions themselves. And it is to be remembered that, in these states, the doctrine is upheld in the absence of any statutory regulations. The courts sustain such trusts by the application of the familiar rules of equity.

Pennsylvania is the mother of spendthrift trusts. By a long line of decisions containing *dicta* so strong and unmistakable the doctrine was slowly evolved from Fisher v. Taylor,[75] decided in 1829, until it finally culminated in an express enunciation of the rule in Shankland's Appeal,[76] decided in 1864.

Pennsylvania.—In Overman's Appeal[77] is to be found the strongest case in the United States. The facts are rather peculiar. The executors, three in number, were directed to pay the income to the children of the testator, and that the same should not be liable for the children's debts. The eldest son was one of the three executors. Of the other two, one died, and the other resigned, thereby leaving the son as the sole executor, and also one of the beneficiaries under the will. Upon filing his accounts as executor it was found that there was a surcharge amounting to a large sum. The question came squarely before the court, was his interest as beneficiary liable for the *devastavit*? On the first argument it was held that his interest was liable. Agnew, C. J., held that to exempt his interest would be a stretch of the doctrine which public policy would not permit. But the case came before the court again on a rehearing and the former decision was reversed. The court held that there was no difference between a liability to the other beneficiaries and a liability to strangers. The court here simply carried the doctrine to its logical conclusion under this extraordinary state of facts. Overman's Appeal has been followed in many cases.[78]

Massachusetts.—In Broadway Bank v. Adams,[79] the language of the gift was, "I give the sum of $75,000, to my said executor in trust, to invest the

[75] 2. Rawle, 33.

[76] 47 Pa. St. 113.

[77] 88 Pa. St. 276.

[78] Walfinger v. Fell (Pa.), 45 Atl. Rep. 492; Winthrop Co. v. Clinton (Pa.), 46 Atl. Rep. 435; *Re* Baeder's Estate (Pa.), 42 Atl. Rep. 1102; Appeal of Kruse, *Id.* 1104; Wanner v. Snyder (Pa.), 34 Atl. Rep. 167; Smeltzer v. Goslee (Pa.), 34 Atl. Rep. 44; *Re* Seitzinger's Estate (Pa.), 32 Atl. Rep. 1097; Barker's Estate, 159 Pa. St. 518; Hahn v. Hutchinson, *Id.* 133; Stambaugh's Estate, 135 Pa. St. 585; Barnett's Appeal, 46 Pa. St. 392; Holdship v. Patterson 7 Watts 547.

[79] 133 Mass. 170.

same and pay the net income thereof, semi-annually, to my said brother Charles during his natural life, such payments to be made to him personally, when convenient, otherwise upon his order in writing, in either case free from the interference or control of his creditors; my intention being that the use of said income shall not be anticipated by assignment. Here we have a direct application of the clause of anticipation applied to a person *sui juris*. Under the terms of the gift Charles was entitled, as of right, to the income at each semi-annual period. The court held that this absolute right to the income was qualified and placed beyond the reach of Charles' creditors, by the clause of anticipation; and say: "The decisions of this court * * * recognize the principle that, if the intention of the founder of a trust, like the one before us, is to give to the equitable life tenant a qualified and limited, and not an absolute estate in the income, such life tenant cannot alienate it by anticipation, and his creditors cannot reach it at law or in equity."[80]

Illinois.—In Steib v. Whitehead[81] there was a devise of lands in trust, for the use and benefit of the daughter; and the net income was to be paid in cash "into the hands of my said daughter, J, in person, and not upon any written or verbal order, nor upon any assignment or transfer by the said J," with gift over on the daughter's death to the heirs of her body. The trustee was summoned as garnishee by reason of money in his hands which it was his duty to pay to J. The court say: "That it was the intention of the testator to place the net income of the property beyond the control of his daughter and her creditors, while in the hands of the trustee, is manifest, and we percieve no good reason, nor has any been suggested, why this intention should not be given effect." The court recognizes the modern tendency of legislation to favor the debtor class, and say: "The courts of the country, in the same liberal spirit, have almost uniformly given full effect to such legislation."

Maine—In Roberts v. Stephens[82] the clause of the will before the court was, "And I hereby enjoin it upon all legatees, annuitants, and other parties interested in the provisions of this will, not to make any arrangement or any agreement for a change in such provisions of the trust under this will, or to assign, or to in any way, directly or indirectly, to transfer, or make over, any claim or rights they may have by virtue of this will, or to pay to any other person any legacy or annuity or any part thereof, than to such persons as are entitled to the same by virtue hereof." Here followed a penalty of forfeiture. The beneficiaries were three sons and other annuitants. A creditor of one of the sons sought to subject the son's interest to the satisfaction of the judgment, but the court held that, while the will does not disclose that the son's interest shall be without the reach of his creditors, yet the intention of the testator, as gathered from the instrument, was that the property should go, not only in sums as he has thereinbefore directed, but to the identical persons named, and to no others. The creditor's bill was dismissed.

Mississippi.—In Leigh v. Harrison[83] there was a bequest "to my daughter, R, in trust for the life of my son, T, with remainder to her, $3.000, and two-thirds of my plantation in L county. * * * She will rent the land and lend the $3.000 to the best advantage and use the rents and interest on the $3,000 for the support of T during his lifetime, making payments quarterly; then the money at the death of T to vest in my daughter, R. The case came before the court on a bill in equity by a creditor to reach the son's interest. The bill was dismissed. The court gave an extended discussion of spendthrift trusts, and upheld the doctrine by the application of the general principles of equity and public policy as evidenced by the exemption laws. But the court intimates that any surplus remaining after ample provision being made for the son's support might be reached by the creditors. It is, however, merely a *dictum*.

Maryland.—In Smith v. Towers[84] the testator devised land to trustees, in trust, to collect the rents and profits and pay the same to my son, R, into his own proper hands, and not into another, whether claiming by his authority or in any other capacity. After R's death the trustee was to convey the land to R's children in fee. It is to be noticed that there is no direct statement that the funds shall not be liable for the debts of the *cestui que trust;* but the court held that such was the manifest intention of the testator, and that R's interest could not be reached by his creditors. This case is to be distinguished from Warner v. Rice.[85] In that case the settlor endeavored by a trust instrument to make himself and his immediate family the beneficiaries, and to hold and enjoy the interests under the trust free from the claims of creditors. In holding that the settlor's interest could be reached by his creditors, the court simply adhered to the universal doctrine that one cannot create a spendthrift trust in favor of himself.

Texas.—In Patton v. Herring[86] the testatrix directed the executor to control the property so that her brother should have the sole right to

[80] For other Massachusetts cases, see Foster v. Foster, 133 Mass. 179; Braman v. Stiles, 2 Pick. 460; Wemyss v. White, 159 Mass. 484; Billings v. Marsh, 153 Mass. 311; Baker v. Brown, 146 Mass. 369; Aasigi v. Shaw, 45 N. E. Rep. 627; Slattery v. Wason, 151 Mass. 256, 7 L. R. A. 393.

[81] 111 Ill. 247. See Spronger v. Savage, 143 Ill. 301; King v. King (Ill), 48 N. E. Rep. 582.

[82] 84 Me. 325, 24 Atl. Rep. 873. See also Wentworth v. Fernald (Me.), 42 Atl. Rep. 658.

[83] 69 Miss. 923, 11 South. Rep. 604.

[84] 69 Md. 77, 14 Atl. Rep. 497. See dissenting opinion in 15 Atl. Rep. 92; Reid v. Safe Deposit and Trust Co. (Md.), 38 Atl. Rep. 899.

[85] 66 Md. 436.

[86] 29 S. W. Rep. 388.

occupy the homestead, together with such personalty as was necessary to maintain the home, and that the executor should control the estate in such manner as might tend to promote its interest, and pay the brother the net proceeds each year during his life. The court held that the will created a spendthrift trust, and that none of the property, or the income of it, was liable for the debts of the brother, even though the income of the estate exceeded the amount necessary for his support. This construction of the will was affirmed in Herring v. Patten.[87] In a late case it was said, "A spendthrift trust created by will cannot be subjected to the payment of beneficiaries' debts."[88]

Nebraska.—This state is the latest adherent to the doctrine of spendthrift trusts. In Weller v. Noffsinger[89] the testatrix devised and bequeathed to trustee in trust for her husband and son, all her real and personal property, to hold in trust for the husband and son until the son should arrive at the age of thirty years. During this time the trustee was to divide the net income equally between the husband and son. But neither the husband or son shall incumber or put any charge or lien upon said estate, nor shall said estate be subject to any debts contracted by the husband or son. When the son arrived at the age of thirty years the entire estate was to vest in equal parts in husband and son. The plaintiff purchased the son's interest at an execution sale, and brings action of ejectment. But the court held that ejectment would not lie, as the son's interest in the hands of the trustee was not subject to sale under execution, and say: "Our conclusion is that the devise to Williamson (original trustee) vested in him the legal title to the real estate described in the will; that the inhibitions against alienating and incumbering the property are effective; that the provisions of the will excluding creditors neither trench upon their legal rights nor infringes any principle of public policy."

Vermont.—The earlier decisions in this state seemed to favor the doctrine that the right of alienation was not an inseparable incident to a life estate created by way of trust;[90] but the doctrine of spendthrift trust did not come squarely before the court until the year 1887, in the case of Barnes v. Dow.[91] The language of the particular clause of the will was as follows: "I give, devise and dispose to my nephew L, and his heirs all my estate, both real and personal, excepting support for my sister H during her lifetime; and I give my estate in trust to my executor. * * * I give to H, my sister, her support during her natural lifetime out of my estate." The court held that H took a life interest and such interest was not liable for her debts. "If it appears from the will that it was the intent of the testator that the beneficiary should have nothing that she could dispose of, it will be effectual to protect the trust as if there was an express clause against alienation." "Neither can a creditor of a beneficiary standing as H does in this case reach his or her interest."

Virginia.—In an early case[92] there was a strong *dictum* favoring spendthrift trusts; and when the question came before the court, the *dictum* of Mr. Justice Miller, in Nichols v. Eaton,[93] and the decision of the Massachusetts Supreme Court in the case of Broadway Bank v. Adams,[94] met with unqualified approval. In Garland v. Garland[95] there was a gift in trust of a plantation, together with slaves, stock, furniture, etc. "The profits of the estate is set apart for his (B. Garland's) use, under his superintendence;" but neither the estate or profits shall be bound for his past debts, or for future debts and liabilities other than for decent and comfortable support," with a limitation over on G's death. The lower court held that the life interest and profits were liable for the debts of the beneficiary, but the decision was overruled in the supreme court. Whether the surplus above the amount requisite for suitable support could be reached by creditors was not decided in this case.

Missouri.—I shall examine the decisions in this state with some particularity. In McIlvaine v. Smith[96] the defendant deeded valuable property to G, who in turn deeded the same property to R in trust for the defendant Smith. The net income was to be paid to Smith quarterly; and it was further provided that any attempt by Smith to anticipate the rent of any quarter before it was actually due shall prevent him or his assigns from ever having any right or interest in the rents, issues, or profits so attempted to be anticipated. It was held by the court that the defendant had no interest that could be reached by execution; but the court further held that the conveyances really constituted one instrument, and was an attempt by the defendant to make himself the beneficiary under the trust instrument. That his interest was liable for his debts was not doubted by the court; and it was suggested by Holmes, J., that the proper remedy for the judgment creditor was by a bill in equity to have the rents and profits, as they accrue, applied in equity to the satisfaction of the debts. The supreme court also held that the property could not be reached by attachment and garnishment.[97] Under this suggestion of the learned judge the

[87] 44 S. W. Rep. 50.

[88] Wood v. McClelland, 53 S. W. Rep. 381, affirming McClelland v. McClelland, 37 S. W. Rep. 350.

[89] 77 N. W. Rep. 1075.

[90] Hayt v. Swift, 13 Vt. 129; White v. White, 30 Vt. 338; Whitcomb v. Cardell, 45 Vt. 24.

[91] 59 Vt. 560, 10 Atl. Rep. 258. See also Wales v. Bawdish (Vt.), 17 Atl. Rep. 1000.

[92] Nichell v. Handly, 10 Gratt. 336; also, Johnston v. Tame, 11 Gratt. 552.

[93] 91 U. S. 716.

[94] 133 Mass. 170.

[95] 87 Va. 758, 13 S. E. Rep. 478. See the sequel to this case in Day v. Slaughter, 13 L. R. A. 212.

[96] 42 Mo. 45.

[97] Lackland v. Garesche, 56 Mo. 269.

case of Lackland v. Smith,[98] involving the same property, came before the court of appeals, where the views of the supreme court were approved, and the property held liable for the debts. In none of the cases was the doctrine of spendthrift trusts involved. But our courts were called to pass upon this doctrine in what is now the leading case of Lampert v. Haydel.[99] This case came before the court of appeals in 1886, and the language of the will was as follows: "I give and devise the next, or middle lot, and the store house thereon, to B & H, in trust, and for no other purpose, for the use and benefit of my three sons, W, C, and J, in equal shares, as long as they may live, with the power in my said sons to use and enjoy equally the rents and profits thereof during their natural lives." (Here follow limitations over.) "My object in making the foregoing disposition of my St. Louis property, and in attaching the limitations aforesaid, is to secure to my children a certain annual income beyond the accident of fortune and bad management on their part, and with this end in view, to take away from them the power of disposing of the same, or of making the same liable in any way for their debts." The leading beneficiary, J, sold to the plaintiff, for $5,000, all his rights in the income due him or hereafter to become due in the manner described in the will. The trustee did not recognize the validity of the sale, and refused to pay over to plaintiff the sum that J was entitled to receive under the will. Rombauer, J., delivered the opinion of the court upholding the restraint as to alienation, voluntary or involuntary. In this opinion Thompson, J., concurred. Lewis, J., dissented; and the case was then certified to the supreme court where the opinion of the court of appeals was affirmed.[100] The opinion was by Sherwood, J., and his learned and strenuous presentation of the doctrine of spendthrift trusts has made this one of the leading cases in the United States. The case of Partridge v. Cavender[101] was very similar in its general provisions, with the exception that the will did not expressly exempt the property from liability for debts. But the court held that an express exemption was not necessary. If the intention of the testator as gathered from the will was to exempt the property from liability for debts, the court would effectuate the intention. This case is very similar to the case of Smith v. Towers.[102] To the same effect is the case of Montague v. Crane.[103] In Bank v. Commerce,[104] the testatrix gave the residue of her estate, real and personal, to a trustee in trust for her husband during his life. The trustee was directed to pay the net income into the proper hands of the husband, or such person as he might appoint. On the death of the husband the trustee was to convey and pay over to the trust property to the heirs of the testatrix. There was a declaration in the will that the sole object of the testatrix was to secure to her husband an ample independence for his life "free from the claims and demands of any creditor he may now or hereafter have, and without any right to intervene, or sequester of the revenues of the trust for the payment of their claims or demands." A condition precedent to the foregoing provisions was that the husband should release his curtesy in his wife's estate and take in lieu thereof the income given him by her will. The husband released the curtesy. A bill was brought in equity to subject the husband's interest to the payment of his debts. The court held that the will did not create a spendthrift trust; that the income of the husband was purchased by the release of his estate by curtesy, and the idea of bounty was entirely lacking in the provisions made by the testatrix. The case of Pickens v. Dorris[105] held that the will did not create a spendthrift trust, as the trust instrument did not expressly or by necessary implication show an intention to withdraw the gift from the claims of creditors. In no other state in the union do we find the doctrine under discussion so clearly set forth, with all its possibilities and limitations. The courts of our state, while upholding the doctrine, have not carried it to extremes, but have given it a logical and consistent application.

Spendthrift Trusts in Favor of the Settlor.—Thus far we have seen that in many jurisdictions a life interest may be given with a restraint upon the power of alienation. It remains to be considered whether or not a settlor can make a settlement in trust for himself and attach to the trust estate a clause of anticipation. The power to make such a settlement has never been recognized by any of the courts of this country or England. Even in the jurisdictions where spendthrift trusts are fostered and encouraged, these settlements are uniformly held to be in fraud of creditors, and void.[106] And the law is well settled that one *sui juris* cannot, as against creditors, either prior or subsequent, settle his property in trust for his own use for life, and over to his appointee by will. Property so settled can be reached by creditors; and their claims have priority over the claims of any devisee or appointee.[107] Neither can a woman on the eve of marriage settle her property in trust to pay the income to her during coverture, and attach to the trust fund a clause of

[98] 5 Mo. App. 153.

[99] 20 Mo. App. 616.

[100] Lampert v. Haydel, 96 Mo. 439.

[101] 96 Mo. 452.

[102] 14 Atl. Rep. 497.

[103] 12 Mo. App. 582. See also Schoeneich v. Field, 73 Mo. App. 452.

[104] 96 Mo. 459.

[105] 20 Mo. App. 1. See Kingman v. Winchell (Mo.), 20 S. W. Rep. 296.

[106] McIlvain v. Smith, 42 Mo. 45; Lackland v. Smith, 5 Mo. App. 153; Jackson v. Von Zedlitz, 136 Mass. 342; J. S. Menken Co. v. Brinkley (Tenn.), 31 S. W. Rep. 92; Gormley v. Smith, 139 Pa. St. 584; Warner v. Rice, 66 Md. 436. See *Re* Lane Fox (1900), 2 Q. B. 508.

[107] Mackason's Appeal, 42 Pa. St. 330.

anticipation.[108] So also a settlement of property on one's self, for life, or until bankruptcy, is invalid, and upon bankruptcy the assignee will take the life interest of the settlor.[109]

Conclusion.—I have now completed the examination of the rise, reasons for, and present extent of, the doctrine of spendthrift trusts among the states. As before stated, the doctrine has, to a large extent, grown up during the last quarter of a century. In 1875, when Mr. Justice Miller rendered the celebrated decision in the case of Nichols v. Eaton,[110] this doctrine was upheld in but one of the states, viz: Pennsylvania; and although the statements of the learned judge in that case can only be considered as a *dictum*, the justice of the doctrine, discerned and set forth with his usual astuteness, commended itself to the courts of the several states. The case of Nichols v. Eaton has been uniformly followed in the federal courts;[111] and it is a noticeable fact that, almost without exception, the state courts have adhered to the doctrine of that case whenever the question has come squarely before them. And furthermore, the practical working of these trusts has shown them to be worthy of commendation, and not in conflict with our public policy. Yet it must be admitted that the extreme views of some of the courts, in applying this doctrine to equitable fees, may become productive of harm; for it permits the settlor to create a spendthrift trust in favor of his heirs and thus indefinitely withdraw his property from commerical channels. But this is no reason why the doctrine itself should be pronounced pernicious, and be cast aside as a thing of evil, for the remedy is sure and certain. It is within the legislative power to control any excesses to which this doctrine may be carried if left without check or limit. Certainly the statutes of New Jersey, referred to in "Statutory Regulations," is a most commendable one, and should be upon the statute books of every state in the union. By thus placing a reasonable limit upon the amount to be enjoyed by the beneficiary free from the claims of creditors, all the benefits of the doctrine are retained, and all anticipated evils are swept away. I feel that this paper can be brought to a close in no better way than by quoting the words of Lord Cottenham, that great chancellor, who moulded and gave form to equity jurisprudence. In passing upon, and holding valid, the clause of anticipation in the separate estate of a married woman, he says: "The power to restrain alienation could only have been founded upon the power of this court to model and qualify an interest in property, which it had itself created, without regard to those rules which the law has established for regulating the enjoyment of property in other cases." "The separate estate and the prohibition of anticipation are equally creatures of equity, and equally inconsistent with the ordinary rules of property. The one is only a restriction and qualification of the other." "When this court first established the separate estate it violated the laws of property as between husband and wife; but it was thought beneficial, and it prevailed. It being once settled that a wife might enjoy separate estate as a *feme sole*, the laws of property attached to this new estate; and it was found as part of that law, that the power of alienation belonged to the wife, and was destructive of the security intended for it. Equity again interfered and, by another violation of the laws of property, supported the validity of the prohibition against alienation."[112] These words are as applicable to-day to spendthrift trusts as they were then to the separate estate of a married woman.

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[108] Pacific Bank v. Windram, 133 Mass. 175; Jacksod v. Von Zedlitz, 136 Mass. 342.

[109] *Re* Pearsons, 3 Ch. Div. 807. But see *Re* Detmold, 40 Ch. Div. 585.

[110] 91 U. S. 716.

[111] Brooks v. Reynolds, 59 Fed. Rep. 923; Hyde v. Woods, 94 U. S. 526; Spindle v. Shreve, 111 U. S. 542, affirming Spindle v. Shreve, 4 Fed. Rep. 136. See also Hunter v. Conrad, 94 Fed. Rep. 15.

[112] Fullett v. Armstrong, 4 Myl. & C. 377.

CRIMINAL LAW — INTERSTATE EXTRADITION — FEDERAL STATUTORY REQUIREMENTS.

EX PARTE BAKER.

Court of Criminal Appeals of Texas, November 6, 1901.

A person accused of crime committed within the state may be tried by its courts after he has been brought into the state by virtue of extradition proceedings, although such proceedings were void because the complaint was not made upon affiant's own knowledge, as required by the federal statute, the accused having failed to take advantage of that defect in the state where demand was made.

DAVIDSON, P. J.: Relator was arrested in March under a complaint charging him with murder. The grand jury was in session, and, having failed to indict, the district judge ordered his release. Some time during the month of August another complaint was filed, charging him with the same murder. In the meantime he had gone to Arkansas. Requisition papers were made out, forwarded, and honored by the governor of that state, and relator brought back to Travis county, in this state. He applied for bail before one of the district judges of Travis county, which was granted in the sum of $500. This he refused to give, and prosecutes this appeal.

The affidavit charging him with murder recites that the affiant verily believes, and has good reason to believe, that appellant was guilty of the murder set out in the complaint. His release from custody is sought because the federal statute requires the party making the affidavit to state the facts upon his own knowledge, and not upon information in regard to the offense sought to be charged; and that, therefore, the whole extradition proceeding was void, viewed from the

standpoint of the writ of *habeas corpus* proceeding in Travis county. Had he sought to take advantage of this position in the state upon which the demand was made, he would have been supported by the authorities. See *Ex Parte* Rowland, 35 Tex. Cr. App. 108,31 S. W. Rep. 651, and authorities cited. This he did not see proper to do, so far as this record discloses, and it is too late to undertake to avail himself of that matter in this state. In Brookin v. State, 26 Tex. App. 121, 9 S. W. Rep. 735, the court said it would not avail defendant against the prosecution that he was arrested by the sheriff of Wilbarger county, Tex., in the Indian Territory, without lawful authority, and brought into this state, and confined in the jail of said Wilbarger county, to be tried for the offense of which he has been convicted. A person accused of crime committed in this state may be tried by courts of this state for such crime, although he may have been kidnaped in another state or territory, and brought thence to this state against his will, and without lawful authority. See, also, State v. Ross, 21 Iowa, 467; Dow's case, 18 Pa. 37; Ker v. Illinois, 7 Sup. Ct. Rep. 225, 30 L. Ed. 421, and decisions there cited. The question decided in Blanford's Case, 10 Tex. App. 627, is not at issue here.

NOTE.—*Trial of Prisoner Under Illegal or Void Extradition.*—Extradition is the surrender by one sovereign state to another, on its demand, of persons charged with the commission of crime within its jurisdiction, that they may be dealt with according to its laws. Bouv. L. Dict. tit. Extradition. It is based on grounds of the highest public policy between nations,—that of mutual protection. Among foreign nations it may be by comity; it is usually by treaty. Between the states of the union it is by compact as represented by the constitution. In both cases, however, such provisions are not for the benefit of the fugitive from justice, and he has no right *per se* to claim any benefits from defects in the manner of their enforcement. Only one apparent exception to this rule exists in this country which we will note further.

International Extradition.—After some conflict of opinion and authority it has now been definitely settled by the United States Supreme Court that a prisoner cannot be tried for an offense other than that for which he was extradited. United States v. Rauscher, 119 U. S. 407. In this case the prisoner, an officer on an American vessel, having been extradited under the treaty with Great Britain of 1842, upon a charge of murder on the high seas of one of the ship's crew, the question was raised whether the circuit court had jurisdiction to try him upon an indictment charging him with cruel and unusual punishment of the same man, such punishment consisting of the identical act proved in the extradition proceedings. It was held that the prisoner could not lawfully be so tried. See for various phases of this rule: State v. Vanderpool, 39 Ohio St. 273, 48 Am. Rep. 431; Cosgrove v. Winney, 174 U. S. 64; People v. Stout, 81 Hun, 336; Blandford v. State, 10 Tex. App. 627. In Cosgrove v. Winney, *supra*, the prisoner was extradited from Canada for larceny. After giving bond he returned to Canada, but came back to Michigan to stand trial for larceny. While awaiting trial he was arrested for another offense not extraditable by treaty. The Supreme Court of the United States held that the case of United States v. Rauscher applied to the facts in this case and ordered the release of the prisoner. In People v. Stout, *supra*, it was held that a person extradited from a foreign government for an offense in the first degree cannot be tried for the same offense in the second degree. The reason for giving the prisoner the right to claim exemption in these cases may be found in the case of *Ex parte* Coy, 32 Fed. Rep. 911. In this case the prisoner had been extradited from Mexico on a charge of the murder of one, E. On being admitted to bail he was immediately rearrested and charged with the murder of one, J, for which he was not extradited. The court held that the prisoner had the right to claim exemption from trial upon any other charge than those mentioned in the extradition proceedings. The court said: "Mr. Coy is not a very important factor in considering this question. This government has entered into solemn treaty stipulations with Mexico with reference to refugees from justice. These stipulations this government cannot forget, nor can it justify their violation without justly incurring the contempt of the civilized world; and yet we are seriously told that Mr. Coy has waived this binding obligation on the part of the United States, and has canceled the right of Mexico to expect the government of the United States to keep its plighted faith." An interesting case arises where the fugitive is brought back by force or through strategem contrary or without regard to any treaty of extradition. Such a case was that of Ker v. People, 110 Ill. 627. Ker was indicted for larceny in the state of Illinois and fled to Peru. While negotiations for his extration were in progress, one Julian, a consul of the United States, secured his arrest without warrant, forced him on board a vessel and brought him to the United States. The court admitted the doctrine that a fugitive, when extradited, must be tried only for the crimes named in the treaty, but held that that doctrine had no application where the fugitive was brought back forcibly, and not under the terms of the treaty, or under an extradition warrant. The court further held that a fugitive from justice had no asylum in a foreign country, and if he is illegally and forcibly removed from such foreign country, that country alone has cause of complaint; he cannot complain of it. It may, therefore, be laid down as a general rule that, in criminal cases at least, the legality of arrest of a fugitive from justice, in a foreign state is not a question with which the courts are concerned, nor is it necessary to give the court jurisdiction. "Undoubtedly," says the court in the case of Ker v. People, *supra*, "the rule at common law is, that the court trying a party for a crime committed within its jurisdiction will not investigate the manner of his capture, in case he has fled to a foreign state or country and has been brought back to its jurisdiction, although his capture had been plainly without authority of law. It is sufficient that the accused is in court, to require him to answer the indictment against him." This case and the rule just announced were affirmed in Ker v. Illinois, 119 U. S. 436. In *Ex parte* Foss, 102 Cal. 347, 41 Am. St. Rep. 182, the prisoner was voluntarily surrendered by the Hawaiian government to be tried in California for the crime of embezzlement, which was not provided for in the treaty of extradition between this country and Hawaii. The prisoner sought to be discharged on the ground that his extradition was illegal. The court denied the petition on the ground that no right

secured to the petitioner by the treaty of extradition had been violated, as that treaty does not in terms or by implication deny to the government of Hawaii the right to surrender, or deprive the United States of the right upon such surrender to receive into its custody, fugitives charged with offenses not enumerated in the treaty.

Interstate Extradition.—The exemption of a fugitive from justice in cases of international extradition from arrest or trial for any other offense than that for which he was extradited does not extend to cases of extradition between the states of the union. There has been some conflict on the question, but the great weight of authority permits a fugitive, after being restored to the demanding state to be arrested, tried and punished for any and all other crimes committed by him within its jurisdiction. Lascelles v. Georgia, 148 U. S. 537; State v. Glover, 112 N. Car. 896; State v. Stewart, 60 Wis. 587, 50 Am. Rep. 388; Carr v. State, 104 Ala. 43; State v. Patterson, 116 Mo. 505; State v. Kealy, 89 Iowa, 94; Lascelles v. State, 90 Ga. 347, 35 Am. St. Rep. 216; Harland v. Territory, 3 Wash. Ter. 131; Williams v. Weber, 1 Colo. App. 191; People v. Cross, 135 N. Y. 536, 31 Am. St. Rep. 850; Ham v. State, 4 Tex. App. 645; State v. Leidigh, 47 Neb. 126; Commonwealth v. Wright, 158 Mass. 149, 35 Am. St. Rep. 475. *Contra:* State v. Hall, 40 Kan. 338, 10 Am. St. Rep. 200; *Ex parte* McKnight, 48 Ohio St. 588; Matter of Cannon, 47 Mich. 481. This rule however, has been held not to apply to civil cases. Moleter v. State, 76 Wis. 308, 20 Am. St. Rep. 71; Compton v. Wilder, 40 Ohio St. 130. On this latter question, however, there is some conflict of authority, the following cases denying the exception just announced: Reid v. Ham, 54 Minn. 305; Browning v. Abrams, 51 How. Pr. (N. Y. S.) 172. We incline to favor the first line of authorities in sustaining an exception in this class of cases on the ground that a party guilty of fraud or false imprisonment in bringing a party within the jurisdiction of the court should not be permitted to derive a personal advantage from his own wrongful conduct. As to kidnaping fugitives from justice and bringing them by force into the jurisdiction of the court, the rule between the states is the same as between nations. The court is not concerned *in any case*, with the manner of making the arrest in the foreign jurisdiction nor of bringing the fugitive within its own jurisdiction. The prisoner can claim no right of asylum in such cases, nor does a violation of the law of the foreign jurisdiction by reason of the manner of his arrest, nor the fact that the extradition papers are vitally defective constitute any defense to his trial in the state having jurisdiction of the original offense. Mahon v. Justice, 127 U. S. 700; *Ex parte* Barker, 87 Ala. 4, 13 Am. St. Rep. 17; State v. Smith, 1 Bailey, L. (S. Car.) 283, 19 Am. Dec. 679; State v. Ross, 21 Iowa, 467. Thus, a fugitive extradited from another state may be held for trial, even if the arrest under the rendition proceedings was without legal authority. New Jersey v. Noyes, Fed. Cas. No. 10,164. So also in the case of *Ex parte* Brown, 28 Fed. Rep. 653, it was held that a fugitive from justice charged with crime will not be released on *habeas corpus* because he was induced by a stratagem to come within the territory where he could be properly arrested, provided the strategem used was not itself an infraction of the law. In the case of *Ex parte* Baker, *supra*, it was held that one arrested and detained under extradition papers and taken into the state where the offense was committed, will not be released on *habeas corpus* for the reason that the extradition papers were defective, and failed to charge a crime, except on complaint of the authorities of the state from which the prisoner was extradited. In State v. Ross, *supra*, it was held that a person arrested in another state, and brought into the jurisdiction by force, by persons acting without authority, and without a requisition from the governor, may nevertheless be tried for the offense committed. To same effect, *In re* Norton, 15 Wkly. Notes Cas. (Pa. 1884) 395. In State v. Smith, *supra*, it was held that it is no ground for the discharge or exemption from punishment of one who had been guilty of an offense against the laws of the trial state, that he was subsequently arrested with lawless violence in another state, and brought within the former jurisdiction in violation of the laws of the state in which he was arrested. The case of *In re* Robinson, 29 Neb. 135, is opposed to these authorities. In this case it was held that a person arrested in another state and brought into the state without extradition proceedings to answer for an offense committed in the latter state could not be held for trial for such offense.

BOOK REVIEWS.

AMERICAN STATE REPORTS, VOL. 83.

Volume eighty-three of the American State Reports contains the following important and carefully prepared monographic notes: Intersecting Lodes in Mineral Patents, p. 41; Power to Create Liens by Receivers, p. 72; Contracts Between Attorneys and Clients, p. 159; Lien of Vendor of Personalty for Purchase Price, p. 451; Mechanics' Liens on Separate Property of Married Women, p. 517; Extraterritorial Effect of Decrees of Divorce, p. 616; The Effect of Changes in By-Laws of Beneficial Associations as Against Pre-existing Member, p. 706; Validity and Effect of Agreements Respecting the Living Separate and Apart of Husband and Wife, p. 859. There are one hundred and thirty cases reported in full, and seven exhaustive monographic notes just referred to. Printed in one volume of 1,014 pages and published by the Bancroft-Whitney Company, San Francisco, Cal.

FREEMAN'S VOID JUDICIAL SALES.

This well known monograph, first published more than twenty years ago, has so expanded during this time during frequent revision that its fourth edition, just issued, makes a good sized law book of over 350 pages. The subjects discussed by the author, the legal and equitable rights of purchasers at void judicial, execution and probate sales, and the constitutionality of special legislation validating void sales and authorizing involuntary sales in the absence of judicial proceedings, have made the book popular with the profession. It is indeed so well known to the bar of of the United States that any extended mention of it as a standard authority on the subjects treated is quite unnecessary. It is enough to say that the present edition is larger than the last; that it has received a thorough revision by the learned author, and that the authorities, American, and English, have been brought down to date. It is a book which can be recommended without any hesitation. Its author is Hon. A. C. Freeman of San Francisco, who has written treatises on Judgments, Executions Co-tenancy and Partition, and editor of American Decisions. The book is printed on excellent paper, well bound in law sheep. Published by Central Law Journal Company, St. Louis.

University of Missouri. JOHN D. LAWSON.

BOOKS RECEIVED.

The Right to and the Cause for Action, both Civil and Criminal, at Law, in Equity, and Admiralty, under the Common Law, and under the Codes. By Hiram L. Sibley, LL. D., Circuit Judge in the Fourth Circuit of Ohio. 1902. W. H. Anderson & Co., Publishers, Cincinnati. Cloth. pp. 165. Price, $1.50. Review will follow.

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts

1. ABATEMENT AND REVIVAL — Dismissal on Demurrer.—An action is not pending after order dismissing the complaint on demurrer.—Burnett v. Southern Ryr Co., S. Car., 40 S. E. Rep. 679.

2. ACCOUNT—By Creditors.— Persons who have received a portion of the funds of a corporation, to which a creditor of the corporation must resort for the payment of his claim, or who have connived at a diversion of such fund, are proper parties to an action by the creditor for an accounting.—Schaake v. Eagle Automatic Can Co., Cal., 67 Pac. Rep. 759.

3. ACKNOWLEDGMENT—Before Clerk Who Executed the Paper.—A deed executed by a clerk of a court cannot be acknowledged before him.—Leftwich v. City of Richmond, Va., 40 S. E. Rep. 651.

4. ACKNOWLEDGMENT—Taken Out of County.—Under Code Civ. Proc. § 179, justice's acknowledgment to mortgage which shows that he took it out of his county is insufficient to entitle the mortgage to record.—Middlecoff v. Hemstreet, Cal., 67 Pac. Rep. 768.

5. ADMIRALTY—Docket Fees.—A respondent in a suit in admiralty, who makes a tender and deposit at the time of filing the answer, is not required to include therein a docket fee.—Merritt & Chapman Derrick & Wrecking Co. v. Catskill & N. Y. Steamboat Co., U. S. D. C., S. D. N. Y., 112 Fed. Rep. 442.

6. ALIENS — Decision of Custom Officers as to Chinese.—The decision of the customs officers denying the right of a Chinese person to enter the United States is conclusive against his right to remain in this country, when subsequently arrested for deportation, unless reversed on appeal to the secretary of the treasury.—United States v. Wong Soo Bow, U. S. D. C., D. Vt., 112 Fed. Rep. 416.

7. ANIMALS—Negligence in Permitting Animals to Run at Large.—Under the stock law, the owner of animals prohibited from running at large is conclusively negligent, if they so run, and liable for their trespass on premises sufficiently fenced to turn animals authorized to so run.—Frazer v. Bedford, Tex., 66 S. W. Rep. 573.

8. APPEAL AND ERROR—Amount in Dispute.— Where plaintiff sued to recover $1,000, and defendant corporation by its answer admitted a liability of $1.40, upon appeal by defendant from a judgment against it for $200, the amount in controversy was less than $200.—Illinois Cent. R. Co. v. Landram, Ky., 66 S. W. Rep. 599.

9. APPEAL AND ERROR—Commitment for Contempt.—An order in an equity cause, committing a witness, not a party to the suit, for contempt in refusing to testify before the cause is at issue, is final and reviewable on a writ of error sued out by the witness.—Flower v. MacGinniss, U. S. C. C. of App., Second Circuit, 112 Fed. Rep. 377.

10. ARBITRATION AND AWARD—Right to Submission Before Bringing Suit.—Where a contract provided that matters of difference shall be submitted to arbitration, but does not provide that no suit can be brought thereon without such submission, such condition is not imported into the contract by necessary implication.—Green v. American Cotton Co., U. S. C. C., W. D. Tenn., 112 Fed. Rep. 745.

11. ASSAULT AND BATTERY—Acquittal of Aggravated Assault as Affecting Charge of Simple Assault.—A person acquitted of aggravated assault on an alleged officer cannot be convicted of a simple assault in resisting arrest by such officer.—Brown v. State, Tex., 66 S. W. Rep. 547.

12. ASSIGNMENTS FOR BENEFIT OF CREDITORS—Composition Creditor. — Action to compel accounting by assignee for benefit of creditors cannot be maintained by a creditor whose claim has been paid in accordance with terms of composition agreement.—Phenix Nat. Bank v. Keim, 74 N. Y. Supp. 606.

13. ATTORNEY AND CLIENT — Liability for Failure to Appeal.—Attorneys, who had agreed to prosecute to conclusion protest against imposition of customs duties, held liable for failure to appeal from decision of appraisers.—Childs v. Comstock, 74 N. Y. Supp. 643.

14. ATTORNEY AND CLIENT—Right to Bind Client by Admission.—An attorney under a general retainer to prosecute a claim against a person cannot, in the absence of a reference by the client of the person to him for information, bind the client by admission of advice.—Lytle v. Crawford, 74 N. Y. Supp. 660.

15. ATTORNEY AND CLIENT—Right to Fee where Relief is Obtained Without Suit.—Attorneys were entitled to the contract price for their services, where they obtained the desired relief without bringing suit, which it was contemplated, when the contract was made, would have to be brought.—Browder v. Long's Exr., Ky., 66 S. W. Rep. 600.

16. BANKRUPTCY—Binding Effect of Adjudication of Involuntary Bankruptcy.—An adjudication of involuntary bankruptcy, duly entered on default for want of an answer to the petition, is as binding on the bankrupt and creditors as one entered upon a hearing, and is conclusive of the commission of the acts of bankruptcy charged in the petition.—*In re* American Brewing Co., U. S. C. C. of App., Seventh Circuit., 112 Fed. Rep. 752.

17. BANKRUPTCY—Deducting Preferences.—A preference received by a creditor of a bankrupt cannot be deducted from a fund in court awarded to such creditor as the owner, where he is not seeking to prove a claim as a creditor of the estate.—*In re* West Norfolk Lumber Co., U. S. D. C., E. D. Va., 112 Fed. Rep. 759.

18. BANKRUPTCY — Disbursements of General Assignee.—A bankruptcy court has no jurisdiction to de-

termine the claim of a general assignee to retain out of the bankrupt's estate disbursements or commissions.—Louisville Trust Co. v. Comingor, U. S. S. C., 22 Sup. Ct. Rep. 298.

19. BANKRUPTCY—Dissolution of Corporation as Act of Bankruptcy.—A corporation which, while insolvent, has permitted some of its creditors to obtain preferences through legal proceedings, and has then, through its officers and stockholders, procured its dissolution, and thereby put it out of its power to discharge such preferences, and actually hindered and delayed other creditors, has committed an act of bankruptcy within the meaning Bankr. Act 1898, § 3a, cl. 3.—Scheuer v. Smith & Montgomery Bock & Stationery Co., U. S. C. C. of App., Fifth Circuit, 112 Fed. Rep. 407.

20. BANKRUPTCY—Payment of Corporation to President in Advance.—Payment by a corporation of checks issued to its president for present small advances of money, made at times when the company was short of funds, held not to be preferences which constituted acts of bankruptcy.—*In re* Union Feather and Wool Mfg. Co., U. S. C. C. of App., Seventh Circuit, 112 Fed. Rep. 774.

21. BANKRUPTCY—Principal of Surety.—Under the bankruptcy law, the remedy of a surety who has not paid the debt cannot be that his principal be adjudged a bankrupt.—Phillips v. Dreher Shoe Co., U. S. D. C., M. D. Pa., 112 Fed. Rep. 404.

22. BANKRUPTCY—Voluntary and Involuntary Petitions Pending at Same Time.—A person should not be adjudged a bankrupt on his voluntary petition, where an involuntary petition is pending, and administration under the voluntary petition will render preferences complained of in the involuntary petition unassailable by reason of the expiration of the four months' limitation fixed by Bankr. Act. § 60.—*In re* Dwyer, U. S. D. C., D. N. Dak., 112 Fed. Rep. 777.

23. BANKS AND BANKING—Right of Receiver to Recover Assessment on National Bank Stockholder.—An objection that the statute of limitations will not bar the right of creditors of a national bank to enforce the individual liability of a shareholder cannot be raised by a receiver of a national bank in an action to recover an assessment on a stockholder.—McDonald v. Thompson, U. S. S. C., 22 Sup. Ct. Rep. 297.

24. BILLS AND NOTES—Collection of Provision for Attorney's Fees.—Where a note provided for an attorney's fee of 10 per cent., should "judicial proceedings" be used in collecting it, such fee was not collectible on payment of the note by an assignee for benefit of creditors.—Briam v. Sullivan, Tex., 66 S. W. Rep. 572.

25. BUILDING AND LOAN ASSOCIATIONS—Application of Payments After Insolvency.—Payments by a borrowing member as dues on stock cannot by operation of law be applied to the extinguishment of the debt and interest after the association has become insolvent.—Vinton v. National Building & Loan Assn., Ky., 66 S. W. Rep. 510.

26. BURGLARY—Recent Possession of Stolen Goods.—Recent possession of stolen goods taken by burglars is *prima facia* evidence of the burglary, as well as of the larceny.—State v. Yandle, Mo., 66 S. W. Rep. 532.

27. CANALS—Title of Easement in Right of Way.—A canal company, acquiring land by condemnation under Acts 1831-32, p. 79, § 29, and Acts 1835-36, p. 84, held to acquire a title in fee which it could convey to its successors, and not a mere easement in a right of way.—Chesapeake & O. R. Co. v. Walker, Va., 40 S. E. Rep. 638.

28. COLLISION—Value of Vessel Lost.—The finding of a commissioner as to the value of a vessel lost in collision is entitled to great respect, and it will not be set aside, where he acted within the bounds of reasonable judgment and upon conflicting testimony.—The Gertrude, U. S. D. C., D. R. I., 112 Fed. Rep. 448.

29. COMMERCE—General Rule.—Any state statute which in its direct result regulates the interstate transportation of individual carriers violates the commerce clause of the United States constitution.—Louisville & N. R. Co. v. Eubank, U. S. S. C., 22 Sup. Ct. Rep. 277.

30. CONSTITUTIONAL LAW—Assessments for Public Improvements.—An assessment for a street improvement, under a city charter providing for assessment on abutting lots of the full cost of the improvement of half of the street in front of and abbutting on such lot, and a proportionate share of the cost of improving street intersections, held not the taking of property without due process of law; due notice and opportunity to contest being given.—King v. City of Portland, U. S. S. C. C., Sup. Ct. Rep. 290.

31. CONTRACT—Agreement Between Competing Bidders.—An agreement between competing bidders, providing for a division of profits, held not to render the successful bidder liable to the other under the agreement.—Daily v. Hollis, Tex., 66 S. W. Rep. 586.

32. CONTRACTS—Continuing Publication of Advertisement After Notice.—The purchaser of a newspaper, including an account against an advertiser whose advertisement was being published under a verbal agreement with the former owner terminable on notice, could not collect for publication continued in good faith after such notice.—Ingalls v. Burlingame, N. H., 51 Atl. Rep. 175.

33. CORPORATIONS—Right of Stockholder to Set Aside Deed by Corporation.—A stockholder cannot question a deed of the company, in the absence of showing that the corporation itself has failed, after a proper application to it, to sue to set the deed aside.—Savings & Trust Co. of Cleveland v. Bear Valley Irr. Co., U. S. C. C., S. D. Cal., 112 Fed. Rep. 698.

34. CORPORATIONS—Surrender Because of Unauthorized Issuance.—In a suit to compel a surrender of a stock certificate, the holder held not obliged to surrender it because of the unauthorized issuance, without regard to whether or not he was entitled to it.—Lakewood Gas Co. v. Smith, N. J., 51 Atl. Rep. 152.

35. COSTS—Decree to Pay Half the Costs.—Where, in a proceeding to determine the priorities of certain liens, the appellants were successful only in part, a provision in the decree that they pay half the costs should be disturbed.—Swift & Co. v. Kortrecht, U. S. C. C. of App., Sixth Circuit, 112 Fed. Rep. 709.

36. COURTS—Sale of Mortgaged Property in Ancillary Suits.—Decrees for the sale of mortgaged property in foreclosure, entered in ancillary suits, should conform so far as may be to that of the court of primary jurisdiction as to the method of sale.—Central Trust Co. of New York v. United States Flour Milling Co., U. S. C. C., S. D. N. Y., 112 Fed. Rep. 371.

37. CREDITORS' SUIT—Indefinite and Uncertain.—Where a creditors' bill, in connection with the exhibits made a part thereof, states the complainant's case with such a degree of certainty as to enable the defendants to defend and the court to enter a decree, it is not subject to the objection of being indefinite and uncertain.—Hutchinson v. Maxwell, Va., 40 S. E. Rep. 655.

38. CRIMINAL LAW—Meaning of Word "Knowing."—The word "knowing," in a criminal statute, means mental assurance and knowledge, and must be clearly shown by circumstances which leave no reasonable doubt on a fair mind.—State v. McBarron, N. J., 51 Atl. Rep. 146.

39. CUSTOMS DUTIES—Protest Before Ascertainment of Duty.—A protest by an importer against the imposition of a duty on merchandise, filed before the duty has been ascertained and liquidated, cannot be considered.—*In re* Bailey, U. S. C. C., E. D. Pa., 112 Fed. Rep. 413.

40. DEPOSITIONS—Before Cause is at Issue.—Under Rev. Stat. § 863, and Sup. Ct. Rule 68, a witness in an equity case cannot be compelled to testify before the cause is at issue.—Flower v. MacGinniss, U. S. C. C. of App., Second Circuit, 112 Fed. Rep. 377.

41. DESCENT AND DISTRIBUTION—Children of Deceased Brother.—Nephews, whose father predeceased their estate uncle, held entitled to their distributive share without setting off debts due the intestate by their father.—Stokes v. Stokes, S. Car., 40 S. E. Rep. 662.

42. DETINUE—Proof of Joint Ownership.—Where, in an action of detinue, the evidence of plaintiff shows affirmatively that one not a party to the suit is a joint owner of the property with them, their action must fail.—Bolton v. Cuthberth, Ala., 31 South. Rep. 358.

43. EJECTMENT—Claim Under Defective Power of Sale.—Where plaintiff sues at law to recover land, and defendant claims possession under a defective power of sale in a mortgage, on dismissal, plaintiff cannot complain that mortgage was not foreclosed as asked by defendant.—Sims v. Steadman, S. Car., 40 S. E. Rep. 677.

44. ELECTIONS—Proof of Election Frauds.—To sustain a conviction under Gen. St. p 1334, of procuring the name of an unqualified voter to be registered, it must be shown that defendant procured such registration and knew at the time that such person was not entitled to vote at the next election.—State v. McBarron, N. J., 51 Atl. Rep. 146.

45. ELECTION OF REMEDIES—Replevin and Action for Malicious Trespass.—An action for malicious trespass in seizing plaintiff's goods under an execution against another is not inconsistent with a replevin suit to recover such goods, so as to render bringing replevin an election of remedies.—Crockett v Miller, U. S. C. C. of App., Eighth Circuit, 112 Fed. Rep. 729.

46. EMBEZZLEMENT—Requisites of Complaint.—A complaint charging that defendant wrongfully, unlawfully and feloniously appropriated and converted to his own use the money of his employer which had been intrusted to him, and that he "embezzled the same," is sufficient charge of embezzlement, though the word "fraudulently" is not used.—*In re* Grin, U. S. C. C., N. D. Cal., 112 Fed. Rep. 790.

47. EMINENT DOMAIN—Against Non-Resident Owners.—Property within the limits of a city, owned by a non-resident, may be dealt with by the city as though it belonged to a resident, and the owner is bound to take notice of an ordinance affecting such property, when it has been duly promulgated as required by law, whether state or municipal.—McIntosh v. City of Pittsburg, U. S. C. C., W. D. Pa., 112 Fed. Rep. 705.

48. EVIDENCE—Letterpress Copies.—Letterpress copies of documents in the hands of the adverse party held properly admitted in evidence.—Illinois Car and Equipment Co. v. Linstroth Wagon Co., U. S. C. C. of App., Seventh Circuit, 112 Fed. Rep. 737.

49. EVIDENCE—Right to Introduce Transcript or Copy of Instrument.—Under Code 1896, § 992, a transcript of the record of a conveyance is not admissible until the party has shown the original is not in his possession or control.—Hammond v. Blue, Ala., 31 South. Rep. 357.

50. EXECUTORS AND ADMINISTRATORS—Appealing Individually.—Under Code, art. 5, § 24, a plaintiff who sued individually and as administrator for two parties held entitled to appeal individually and as administrator for one of the parties, without appealing as administrator for the other.—Buchanan v. Patterson, Md., 51 Atl. Rep. 169.

51. EXECUTION—Liability of Life Insurance Company on Policy of Debtor.—A provision in a life policy for paid-up insurance held not to make the insurance company's liability thereunder subject, under Code, § 3601, to the lien of a *fieri facias* issued against the insured.—Boisseau v. Bass' Admr., Va., 40 S. E. Rep. 647.

52. EXECUTORS AND ADMINISTRATORS—Liability for Rents Collected.—Administrator's bond held not liable for rents collected by administrator.—Jennings v. Parr, S. Car., 40 S. E. Rep. 683.

53. EXTRADITION—Requisites for Rendition of Foreign Criminals.—The jurisdiction of a United States commissioner to examine and commit one who has committed crime in a foreign country, and certify the proceedings to the secretary of state, is not dependent on the fact that he issued the warrant of arrest. *In re* Grin, U. S. C. C., N. D. Cal., 112 Fed. Rep. 790.

54. FORGERY—On Third Person in Employ of Another.—Where an indictment charges that defendant passed a forged check on a third person with intent to defraud, he may be convicted, though the proof shows that the third person was in the employ of another, and that the goods and money given in exchange belonged to the employer.—State v. Eaton, Mo., 66 S. W. Rep. 539.

55. FRAUD—Inadequacy of Consideration.—Whether the consideration of a contract is so inadequate as to suggest fraud cannot be considered upon demurrer, but only upon a plea of fraud.—Price's Admx., Ky., 66 S. W. Rep. 529.

56. FRAUD—Pleading Ignorance.—Defendant, being secretary and treasurer of a corporation at the time he sold his shares to plaintiff, cannot claim that his representations as to the financial condition of the corporation were made by him in ignorance of the fact that they were false.—Drake v. Holbrook, Ky., 66 S. W. Rep. 512.

57. FRAUDULENT CONVEYANCE—Wrongful Attachment.—That an attachment is sued out without just ground therefor is a wrong against the debtor, but such attachment is not vulnerable to attack on that ground by ordinary creditors' bill by other creditors.—Meyrovitz v. Glaser, Ala., 31 South. Rep. 360.

58. GUARANTY—What is Sufficient Acceptance.—Information received from any source that goods were being delivered to the agent upon the faith of the guaranty was sufficient notice of acceptance to bind the guarantor.—Greer Machine Co. v. Sears, Ky., 66 S. W. Rep. 521.

59. HIGHWAYS—Long-Continued User.—A road may be shown to be a public road by evidence of long-continued use, assignment of hands to work it by the proper authorities, and the like.—Race v. State, Tex., 66 S. W. Rep. 560.

60. HOMESTEAD—Conveyance of Land by Deed Absolute But in Fact as Security.—The conveyance of land by a deed absolute in form, but in fact as security, is not a waiver of the right to claim the premises as a homestead, as against one claiming a lien thereon under a judgment against the grantor.—Swift & Co. v. Kortrecht, U. S. C. C. of App., Sixth Circuit, 112 Fed. Rep. 709.

61. HOMICIDE—Self-Defense in Disarming Opponent.—If deceased was about to commit a felony, defendant had the right so disarm him, but had no right to use more force than reasonably appeared necessary for that purpose.—Burton v. Commonwealth, Ky., 66 S. W. Rep. 516.

62. INJUNCTION—Against Underpinning Private Buildings.—An owner of property abutting on a street held not entitled to enjoin the city and board of rapid transit commissioners from entering his premises and underpinning his buildings.—March v. City of New York, 74 N. Y. Sup. 630.

63. INTEREST—Interest on Insufficient Payments of Interest.—Refusal to allow interest on three payments on a mortgage, two of which were insufficient to pay the interest on the mortgage, and the third appeared as a credit as of the date of the order of court authorizing it to be so applied, held not error.—Hopper v. Williams, Md., 51 Atl. Rep. 167.

64. INTERNAL REVENUE—Postal Card Notice by Warehousemen.—Postal card notice, sent by warehouse company on receipt of goods to the assignee, held not to constitute a warehouse receipt, to be stamped, under the war revenue act of 1898.—Merchants' Warehouse Co. v. McClain, U. S. C. C. of App., E. D. Pa., 112 Fed. Rep. 787.

65. INTOXICATING LIQUORS—Irregularities in Election as Defense.—Where an election has been held, and the result declared and recorded, as provided by law, the county "has voted against the sale" of liquors, within the meaning of Act June 2, 1889, § 1; and in prosecutions for offense thereunder mere irregularities in the election are no defense.—Barton v. State, Fla., 31 South. Rep. 361.

66. JUDGMENT—Conclusiveness of Decree of Foreclosure.—Where a mortgagee sues to foreclose, and the title in an action to which she was not a party had been found to be in one other than the mortgagor, the decree of foreclosure was not binding on such other; he not being a party.—Slack v. John, N. J., 51 Atl. Rep. 151.

67. JUDGMENT—Opening Default Judgment.—A court at a statutory term held to have jurisdiction to open a default judgment made at a preceding term and by order continued to the next term.—Ward v. Western Union Tel. Co., S. Car., 40 S. E. Rep. 769.

68. JUSTICES OF THE PEACE—Cases Tried at Same Time.—That a magistrate tried three cases against the same defendant at the same time, where evidence was taken in each case and and separate judgments entered, held no ground for reversal.—Baker v. Irvine, S. Car., 40 S. E. Rep. 672.

69. LANDLORD AND TENANT—Eviction by Landlord.—Where a landlord wrongfully evicts the tenant from an appreciable, material, or substantial part of the demised premises, the landlord's right to recover rent is thereby defeated.—New York Dry Goods Store v. Pabst Brewing Co., U. S. C. C. of App., Seventh Circuit, 112 Fed. Rep. 381.

70. LANDLORD AND TENANT—Right of Tenant to Dispute Landlord's Title.—A tenant cannot set up title in himself, or an outstanding title, to defeat the landlord's recovery of possession, unless the tenant has acquired the landlord's title, or it has expired.—Hammond v. Blue, Ala., 31 South. Rep. 357.

71. LICENSES—License Tax on Street Railway.—To entitle a city to levy a license tax on a street railway, it is not necessary that the right so to do be reserved in the ordinance granting the company's franchise.—Newport News & O. P. Ry. & Electric Co. v. City of Newport News, Va., 40 S. E. Rep. 645.

72. LIMITATIONS—Final Report of an Administrator.—A final report of an administrator starts the running of limitation in his favor as against the heir, whether a discharge has been granted or not.—Jennings v. Parr, S. Car., 40 S. E. Rep. 683.

73. LIMITATION OF ACTIONS—Payments Under Contract of Compromise.—Payments under a contract of compromise do not take the case out of the statute of limitations, not being made in part payment of the original debt, and not therefore to be regarded as an acknowledgment that it was due.—Price's Admx. v. Price's Admx., Ky., 66 S. W. Rep. 529.

74. MANDAMUS—To Compel Criminal Clerk to Enter Sentence.—A *mandamus* will not issue from the court of criminal appeals to compel the clerk of the court below to enter the sentence in a criminal case on the record.—Jones v. State, Tex., 66 S. W. Rep. 559.

75. MASTER AND SERVANT—Assumption of Risk.—Where a certain risk of an employment is plainly observable to an employee, and he continues to work where such risk is constantly encountered, he assumes the risk as a matter of law, and the question is not for the jury.—Lindsay v. New York, N. H. & H. R. Co., U. S. C. C. of App., Second Circuit, 112 Fed. Rep. 884.

76. MASTER AND SERVANT—Defective Machinery.—Receiver of electric light company held guilty of negligence in permitting rods supporting lamps to become rusted, so that they broke while a trimmer was caring for the lamp.—Dupree v. Tamborilla, Tex., 66 S. W Rep. 595.

77. MASTER AND SERVANT—Liability to Volunteer Servant.—Where plaintiff, a boy about 16 years old, employed as off-bearer from a planing machine, volunteered to oil the machine after he had been warned that it was dangerous, the master is not liable to him for an injury received.—Floyd v. Kentucky Lumber Co., Ky., 66 S. W. Rep. 501.

78. MECHANICS' LIENS—Constitutionality.—Ky. St. § 2463, giving to a material-man a lien, held constitutional, though it requires the owner to know his peril, before settling with the contractor, that he has paid for all material purchased.—Hodges v. Arvidson, Ky., 66 S. W. Rep. 601.

79. MINES AND MINERALS—Consideration in Oil Lease.—Where, in a lease of oil lands, the lessee agrees to complete a second well within 90 days after the completion of the first well, but does not agree to complete, or even to commence, the first well, such agreement as to the second well is no consideration for the contract.—Federal O l Co. v. Western Oil Co., U. S. C. C., D. Ind., 112 Fed. Rep. 373.

80. MORTGAGES—Assignment.—Where a mortgagee assigned the mortgage partly to himself as administrator and partly to a third party, claims against the mortgagee personally accruing after such assignment could not be set off against the amount due under the mortgage.—Hopper v. Williams, Md., 51 Atl. Rep. 167.

81. MORTGAGES—Merger of Surety With Subsequent Conveyance.—The lien of a trust deed given to indemnify a surety does not merge in the title conveyed by a subsequent deed absolute in form given to such surety to secure him against a different liability.—Swift & Co. v. Kortrecht, U. S. C. C. of App., Sixth Circuit, 112 Fed. Rep. 709.

82. MOTIONS—Redocketing.—A motion in a cause already upon the calendar should not be docketed anew.—Ward v. Western Union Tel. Co., S. Car., 40 S. E. Rep. 970.

83. MUNICIPAL CORPORATIONS—Authority to Purchase Land for Reservoirs.—Under 17 Del. Laws, ch. 205, §§ 1, 4, 7, the board of water commissioners of the city of Wilmington held to have authority to purchase lands for reservoirs with funds derived from water revenue.—Weldin v. City of Wilmington, Del., 51 Atl. Rep. 157.

84. MUNICIPAL CORPORATIONS—Ordinances as Evidence of Negligence.—Municipal ordinance held admissible in evidence, without pleading, to show negligence of railroad company in violating it.—Brasington v. South Bound R. Co., S. Car., 40 S. E. Rep. 665.

85. NEGLIGENCE—Definition of Gross Negligence.—Gross negligence was properly defined in an instruction as the failure to exercise slight care.—Chesapeake & O. Ry. Co. v. Dodge, Ky., 66 S. W. Rep. 606.

86. NEGLIGENCE—Evidence as to Elements Not Pleaded.—In action against street railway company for injuries, testimony that the accident was due to the rough condition of the track held not admissible, where not averred.—Richmond Ry. & Electric Co. v. West, Va., 40 S. E. Rep. 643.

87. NOTICE—Loss of Wife's Society as an Element of Damages.—A husband, in an action for a nuisance causing the sickness of his wife, may recover for the loss of the society and the comfort of the wife.—Neville v. Mitchell, Tex., 66 S. W. Rep. 579.

88. OFFICERS—Length of Term.—Where a statute fixing the duration of an official term is ambiguous, it must be construed so as to limit the term to the shortest period.—Smith v. Bryan, Va., 40 S. E. Rep. 652.

89. OFFICERS—Police Officer as State Official.—A police officer is an official of the state, and not of the municipality, and is therefore not within Const. art. 6, § 20, relating to the removal of city officers.—Smith v. Bryan, Va., 40 S. E. Rep. 652.

90. PARTNERSHIP—Excluding Partner From Business.—One partner has no right to exclude another from the business against the latter's will.—Harris v. Harris, Ala., 31 South. Rep. 355.

91. PATENTS—Extension by Reissue.—The claims of a patent, which has been in existence for 10 years and

sustained as valid by the courts, cannot be broadened by reissue to cover structures which had been previously held not to infringe.—Troy Laundry Machinery Co. v. Adams Laundry Machinery Co., U. S. C. C., N. D. N. Y., 112 Fed. Rep. 437.

92. PAYMENT—Presumption from Receipt of Interest.—Receipts for payment of interest on a bond held to prevent the presumption of payment attaching to the bond.—Jennings v. Parr, S. Car., 40 S. E. Rep. 683.

93. PRINCIPAL AND AGENT—Implied Powers.—The implied powers and authority of an agent employed for a particular service depend largely upon the circumstances in each case, and upon what is necessary or reasonable to enable him to effect the purpose of his agency.—National Bank of the Republic v. Old Town Bank, U. S. C. C. of App., Seventh Circuit, 112 Fed. Rep. 726.

94. PRINCIPAL AND SURETY—Subrogation of Lender to Rights of Surety.—Where a borrower gives to his surety on the note to the lender a trust deed to indemnify such surety against loss, the lender is entitled to subrogation to the rights of such surety under such deed, and to a lien on the premises conveyed thereby superior to that of a subsequent judgment creditor.—Swift & Co. v. Kortrecht, U. S. C. C. of App., Sixth Circuit, 112 Fed. Rep. 709.

95. PUBLIC LANDS—Bona Fide Purchaser—One purchasing from a grantee of the Southern Pacific Railroad Company land apparently within the scope of its grant, not conveyed to or for the use of such company, so as to be protected by Act March 3, 1887, and paying nothing therefor, except by giving his legal services, held not a *bona fide* purchaser.—United States v. Southern Pac. R. Co., U. S. S. C., 22 Sup. Ct. Rep. 285.

96. RAILROADS—Cattle Guards.—The line of fence which must be protected by a cattle guard means a fence as near the railroad track as it can be built.—Burnett v. Southern Ry. Co., S. Car., 40 S. E. Rep. 679.

97. REMOVAL OF CAUSES—Forfeiture of School Lands.—Suit by the state against a citizen to enforce a forfeiture of school land patented held not originally cognizable by federal courts or removable thereto.—State of West Virginia v. King, U. S. C. C., S. D. W. Va., 112 Fed Rep. 369.

98. SALES—Time as Essence.—If time appears, from a fair construction of the language of a contract of sale and under the circumstances, to be of its essence, stipulations in regard to the time of performance will be held conditions precedent.—Henderson v. McFadden, U. S. C. C. of App., Fifth Circuit, 112 Fed. Rep. 889.

99. SEAMEN—Discharge in Distant Port.—The fact that a mariner is found, after trial, to be incompetent to perform the service for which he shipped in a satisfactory manner, will not justify the master in discharging him in a distant part before the expiration of his term of service.—Capillo v. Bristol Packing Co., U. S. D. C., N. D. Cal., 112 Fed. Rep. 439.

100. STATUTES—Construction by Practice.—The construction put upon a statute of doubtful import, when it first came into operation, will, after lapse of time, and where it has not been changed by the legislature or judicial decision, be regarded as correct.—Smith v. Bryan, Va., 40 S. E. Rep. 652.

101. STREET RAILROADS—Liability of Injury to Workman.—In an action against a street railway for injuries to one working between the tracks, a charge that the defendant should "do all in its power to see to it that no injury happens to any of the workmen" held not error, as modified on request.—Third Ave. Ry. Co. v. Krausz, U. S. C. C. of App., Second Circuit, 112 Fed. Rep. 879.

102. SUBROGATION—Holders Under Defective Power of Sale.—Persons holding under a deed executed under a defective power of sale in a mortgage held entitled to be subrogated to the rights of the mortgage.—Sims v. Steadman, S. Car., 60 S. E. Rep. 677.

103. TAXATION—Liability of Collectors De Facto.—In an action against the sureties on a bond of a tax collector, held immaterial whether he was collector *de jure* or only *de facto*.—Town of Seabrook v. Brown, N. H., 51 Atl. Rep. 175.

104. TAXATION—Vessels Engaged in Interstate Commerce.—Registered vessels engaged in interstate commerce, having the name of their home port, in the state of the domicile of their owner, painted thereon, as required by Rev. St. § 4178, have their *situs*, for the purposes of taxation, at such home port, and cannot be taxed as property in another state.—Yost v. Lake Erie Transp. Co., U. S. C. C. of App., Sixth Circuit, 112 Fed. Rep. 746.

105. TELEGRAPHS AND TELEPHONES—Delivery on Sunday.—Telegraph company held not liable for delay in delivering message on Sunday.—Western Union Tel. Co. v. McConnico, Tex., 66 S. W. Rep. 592.

106. TRIAL—Conviviality Between Juror and Party to the Suit.—Conviviality and conversation between juror and brother of one of the parties to the action held sufficient cause for setting aside a verdict.—Gulf, C. & S. F. Ry. Co. v. Matthews, Tex., 66 S. W. Rep. 588.

107. TRIAL—Right to Direct Verdict.—On a motion by a plaintiff to instruct the jury to find a verdict in his favor, the court should consider, not only all the facts which the evidence tends to establish, but all such fair and reasonable inferences of fact as the jury might lawfully draw from the evidence.—New York Dry Goods Store v. Pabst Brewing Co., U. S. C. C. of App., Seventh Circuit, 112 Fed. Rep. 881.

108. TROVER AND CONVERSION—Refusal of Carrier to Deliver Freight.—The refusal of a carrier's agent to deliver freight, claiming to hold it for charges on previous shipments until he could consult his superiors, held not sufficient evidence of conversion.—Stahl v. Boston & M. R. R., N. H., 51 Atl. Rep. 176.

109. TRUSTS—Validity of Exemption of Liability for Debts.—A provision in a trust deed conveying real and personal property to a trustee, which declares that the property rights of the beneficiary shall not be liable for his debts, is void, especially in view of Code 1887, § 2428.—Hutchinson v. Maxwell, Va., 40 S. E. Rep. 655.

110. USURY—Annuity for Release of Debt.—A contract which was in substance an undertaking to pay an annuity of $250 a year in quarterly installments, in consideration of the release of a debt of $4,000, held not usurious.—Price's Admx. v. Price's Admx., Ky., 66 S. W. Rep. 529.

111. WATERS AND WATER COURSES—Diversion of Surface Water.—The diversion of surface water, caused by the erection of a building on land over which it is accustomed to flow, gives no ground of action to one suffering injury thereby.—Jessup v. Bamford Bros. Silk Mfg. Co., N. J., 51 Atl. Rep. 147.

112. WATERS AND WATER COURSES—Enjoining Maintenance of City Pumping Station.—A landowner whose lands are injured by a city pumping station, may maintain successive actions for trespass, or may enjoin the maintenance of the plant, and is not required to institute proceedings for its condemnation.—Reisert v. City of New York, 74 N. Y. Sup. 673.

113. WATERS AND WATER COURSES—Irrigating Ditches.—Use of an irrigating ditch held not in subordination to the owner of the land over which it ran.—Stufflebeem v. Adelsbach, Cal., 67 Pac. Rep. 140.

114. WITNESSES—Competent to Prove His Own Sanity.—Plaintiff was a competent witness as to his mental condition at the time he entered into a compromise.—Louisville & N. R. Co. v. Carter, Ky., 66 S. W. Rep. 508.

115. WITNESSES—Grand Juror's Testimony as to What Happened in Jury Room.—A grand juror held not competent to testify in suit for libel as to testimony of a witness before the grand jury.—Pritchett v. Frisby, Ky., 66 S. W. Rep. 503.